

BACK OFF!



THE DEFINITIVE GUIDE TO STOPPING
COLLECTION AGENCY HARASSMENT
BENJAMIN F. DOVER

Author of Life After Debt

**21st. CENTURY
EDITION**

BACK OFF!

The Definitive Guide To Stopping Collection Agency Harassment

Benjamin F. Dover

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ACKNOWLEDGMENT

Thanks to everyone in my world that's been there through the good times, as well as the really dark ones. The list is too damned long, so I'm not even going to try. Because I'll not mention it, forgetting them. You know who you are.

With love,

*And a special thank you out to God
For a second multiple marriage.*

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Oh yeah:

*And a special thanks goes out to...God.
For ~~a second~~ multiple chances.*

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IT STARTED WITH GOOD INTENTIONS

*"You're not the only one who's made mistakes,
but they're the only thing that you can truly call your own."*

Billy Joel

Okay ... so how did "it" happen to you?

Did you get sick? Maybe you were injured in a car accident ... or lost your job. Did you get "Enron-ed" or "WorldComm-ed"? Maybe your golden dot-com "goose" stopped laying its golden eggs—and you're the one that got cooked.

Maybe it was a former business partner that ripped you off: Did they run your business—and your life savings—into the ground?

Perhaps it was a different type of business partner: A spouse or domestic partner that dragged you through a messy split. Did you wake up one day to find that your "ex" had urinated away thousands of dollars on credit cards you never knew you had? Did you catch your spouse cheating on you? (Maybe you're the one that got caught with your hand in the proverbial cookie jar. Ouch!)

What about all that cheap money you borrowed so you could cram four years of college into six? Problems

finding a job? Or maybe it's just the stark reality of starting at the bottom of the hiring ladder that's impacting your disposable income now that you've entered the real world.

How 'bout those pre-approved credit card offers you started receiving when you graduated from high school? How many did you have in your pocket on the first day of college when you were a freshman? Youth, alcohol and credit cards are always a dangerous mix.

No, it's not just inexperienced consumers running up big credit card bills anymore.

According to Dr. Robert Manning, professor of humanities at Rochester Institute of Technology in New York, "the elderly are living longer and that's leading to a host of abuses. The aging of the boomer generation means you've got people aging into debt." The good doctor contends that the use of credit cards by seniors will mirror their use in the general population.

And while the general population's credit card spending may be considered frivolous at times, for aging Americans it can be a matter of life or death. Being legally blind, suffering from high blood pressure and other health-related problems created a whole new set of ethical challenges for older consumers like 84-year-old Juanita Spencer of Dallas. With a monthly fixed income of \$827, Juanita faced a \$200-a-month cash shortfall caused by the cost of prescription drugs not covered by Medicare.

The ability of Juanita Spencer and millions more just like her to extend their lives is now being bankrolled by our friends at Visa, MasterCard and Discover. In fact a recent study supports this theory: The total average debt of households headed by someone aged 65 or older soared from \$8,000 in 1992 to \$23,000 in 2000. That's an increase of almost 190%.

So, back to the beginning: It really doesn't matter how you got into this situation. As the saying "It takes two to tango" hammers home, it takes two to make a credit transaction—and for many, an insurmountable debt nightmare. Should consumers have to shoulder the blame for their financial predicaments? You betcha. But what about the banks and credit card companies that continue to aggressively market their high interest rate/high fee traps to consumers who have no visible means of support?

The credit card industry continues to aggressively market to consumers that are already knee-deep in financial doo-doo. Aren't they just as much an accessory to this crime of insolvency as the bartender who continues to serve drinks to someone that's visibly drunk?

The facts are crystal-clear: This country does a crappy job of educating the masses about money—and, more importantly, managing debt and credit. We break our backs teaching and preaching on subjects from ethnic diversity to sexual tolerance, but heaven forbid we discuss a topic that touches every single person in every single demographic in this country. It's not brain surgery—just money.

Playing the blame game's not going to solve this fiscal ineptitude; what does matter is how well-equipped you are to weather what might be the most tumultuous chapter of your life. There really are two types of consumers: Those with financial problems—and those who are going to have financial problems.

Cynical? Maybe. But sooner or later, almost everyone's going to hit some rough financial road. Believe me, I know first-hand: There's a direct correlation between your recovery time (and ability to salvage your dignity and, sometimes, your marriage) and your survival skills. The better you understand the inner workings of the debt collection industry, the faster you'll regain your balance—and your life. Again, I know this first-hand because I've been there.

I'll save you a ton of brain damage if you follow my advice. I'll help you avoid muttering the predictable "I wish I knew then what I know now" line a few years from now. This book is my gift to you ... oops, forget that line. I hope you paid for it. Anyway this book is a gift that'll save your sanity. You've got a chance to bypass the misery inflicted by the debt collection industry.

I wish there had been someone around like me back in 1986.

I almost blew my brains out because of the lies I was stupid enough to believe originating from a scumbag debt collector in Houston. I remember it like it was yesterday: This gutless liar, berating me over my overdue American Express Platinum card. Did I owe the money? Of course,

but did I intentionally set out to defraud American Express? Never.

I used the card for my business affairs. Unbeknownst to me at the time, my company was failing beyond repair and out of control. Then, to add insult to injury, the threat of arrest at 5 o'clock that afternoon if I didn't wire this clown a sum that represented 10% of the outstanding balance (I'd paid it down to \$18,000).

"You're worth more dead than alive," said the collector working for AMEX's hired thugs, the notorious debt collection company Payco. "Either you get that money to me by five, or the sheriff's coming out with a warrant for your arrest."

Great. I'm not only broke, but now I've got to figure out how to pay for a criminal attorney and post bond. Hell, I didn't know that this guy was lying through his teeth. All I knew was that I was spooked by how much he knew about how much money I owed (overall)—and to whom I owed it.

And he knew the names of my best friends, the names of my relatives ... he even knew the names of my neighbors next door and across the street.

But my, how the tables have turned.

The secrets of the debt collection industry, their motivations and most important, their tactics, are about to be revealed. The result is something they fear more than anything: Educated Debtors.

Think of it this way: When you see someone perform a good magic trick, it's pretty amazing, isn't it? It's almost like...magic! You can't figure out how they did it. Until you learn the secret, that is. Then it's not so amazing anymore, is it? And it never really was magic—they just knew more than you did. The same is true in the debt collection world.

They'll call you at work. They'll call you at home. They'll call your parents or your brother or your sister looking for you. They'll even call your next-door neighbor. How do they know? How did they find you?

Stand by, because their "secrets" are about to be revealed. You are about to turn the tables on one of the biggest sources of complaints to the Federal Trade Commission every year. We're about to level the playing field in your battle for financial survival.

Strap on the grenades: You're about to go to war against a breed of tele-terrorist known as the debt collector.

THROWING GOOD MONEY AFTER BAD

"It's what you learn after you know it all that counts."

John Wooden

This book is not a "how to" guide to getting out of your debts.

It's not intended to show you how to get out of bills you rightly owe, but to give you an insight into how the system really works.

Bottom line (all together now): If you don't pay your bills, we all end up paying in the long run.

Credit card companies, banks, mortgage companies, retailers—they'll just pass along their higher cost of doing business in the form of higher prices. It doesn't matter if they lost money because of their greed or stupidity, they'll simply pass along the losses to all of us. Someone's gotta pay.

Sooner or later you're going to reach a point in your life when you're going to re-evaluate your situation without guilt or emotion. The late, great Howard Cosell once said:

*What's popular isn't always right...
...and what's right isn't always popular.*

Those words are more true today than when he first said them almost 40 years ago. Whenever you make a decision based on emotion, you're increasing the chances of it back-firing and creating a bigger mess. You'll start stacking one bad choice on top of another. The harder you try to do the right thing, the worse it gets. It's like struggling to get out of quicksand when, in reality, you're accelerating your demise.

Debt collectors know this, and they know how to cash in and take advantage of you when you're most vulnerable. They're incredibly talented at pushing the right fear buttons. They can get you to pawn your wedding ring. They anticipate your replies and know exactly what to say to coerce you into sending the grocery or electricity money to them via Western Union's "check-by-phone" within the hour. These manipulative bottom-feeders know how to scare you into sending them post-dated checks from now until the turn of the century.

But for the average "can't wait 'til payday" wage slave, other things come first. Maybe I'm just being irresponsible, but the way I see it, there are more pressing needs than sending money to that tele-punk:

Food
Mortgage/Rent
Utilities/Telephone
Insurance [Health/Property/Auto]
Car Payments

I've purposely omitted credit card payments from my Top Five list, because they **don't** rate, not in the first tier of financial responsibilities. And it's no surprise to the credit card industry, either. "We recognize that we're pretty far down the priority list," says Edward R. Scully, vice president of one of the industry's biggest credit card players, First USA. "People are going to pay rent and put food on the table before they pay credit card companies. Our leverage is not that great."

With that in mind it's important to note that the deals you make today with your creditors can and will affect you for the next decade, or longer. Learn early in the game to only make deals with the original creditors—never repay hired-gun, third-party debt collectors. Pay a debt collector and you'll regret it for years, as well as retard financial and emotional recovery exponentially.

Debt collectors are results-driven animals. They say and do whatever it takes to get you to send them the cash. They promise you that your credit report will be in better shape if you send them the money. They love to make the "I'll delete any and all negative information from your credit report if you pay me" promise. They may even sound semi-rational and even-handed—until you stand your ground or question them. Then they'll show their true colors, revert to their true behavior and do what they do best: Intimidate.

Only repay the people you owe

Do the best you can to repay your debts, but only pay the original creditor. No matter what the debt collectors tell

you, it's your right under federal law to never deal with third-party debt collectors. Fire 'em and only deal with original creditors. End of story. Have a nice day.

However: If you begin repaying the first debt collector that comes calling, your act of ignorance and good intentions will:

1. Open you up to repeated harassment at the hands of this debt collector and others.
2. Set you up for negative information that will be reported on your credit reports for years to come.
3. Set you up to potentially owe the same debt to the original creditor—even if you've already paid their hired-gun debt collector!

Sooner or later your accounts are going to end up in the hands of highly trained and rabid collection agents armed with more information about you than you could ever imagine. The information superhighway has expanded and accelerated over the last decade. With access to more databases only a mouseclick (or two) away for today's debt collectors, your willingness to do business with the dark side will put you in a position of weakness faster than ever before.

The stakes are just too high to jack around when you're dealing with an industry that's as money-driven and ruthless as this one. How you choose to pay (or not pay) your debts will affect virtually every facet of your life for years. Derogatory information on your credit reports not only raises the cost of doing business in the world of credit—from higher interest rates on credit cards to home loans or auto financing—but, as reported in my book *Life*

After Debt in 1993, bad credit can affect your ability to get a job, or even insurance.

Employers, either current or prospective, may review your credit reports in the job promotion or hiring process. Is this fair? No—but as President Jimmy Carter once said, "Life is not fair." That's why it's crucial that you understand what's at stake in your game of financial survival.

I'm not trying to convince you to avoid dealing with a debt collector because I have no use for these low-lifes. I'm trying to educate you about their tactics and show you what will happen if you try to deal with one of them. Let's go back to my home state of Texas for the story of the debt collector that lied and cheated ... the creditor they were ostensibly collecting for!

From the "It Can Happen to Any of Us" Department

A debt collection agency in Texas collected a debt for one of their creditor/clients—and then they went bankrupt! Apparently the collection agency "misappropriated" the funds they were collecting for their clients and failed to repay the monies to the original creditors. As a result, the original creditor ended up suing the debtor because they never received their money. (Oops.) The consumer showed their creditor that they did pay the debt to the collection agency, but the original creditor won their case in court. The debtor had to pay the debt . . . twice!

Sound unfair? Jimmy was right: Sometimes life is unfair. And justice is blind. Many times, it's deaf and dumb, too. But you don't have to be.

Do yourself a favor and believe what I'm about to tell you. Avoid the brain damage and repay your debts, but on your terms. Repay your debts to whom you owe the money—but never a third-party debt collector! If you follow just that one piece of advice, you'll save yourself more grief than you could ever imagine.

BANKRUPTCY: YOUR ULTIMATE WEAPON

"Adversity makes a man wise, not rich."

Unknown

Everyone's entitled to change their opinion. I've had over eight years to think about my position on bankruptcy and I've changed my mind.

Let me preface this by saying I was able to dodge the "BK" bullet. Even though several of my attorneys urged me to "flush" my problems by taking a Chapter 7 bankruptcy in the mid-1980s, I held out and worked out of my extreme circumstances. I suggest you try to work through your debt-related challenges if possible, too. But because the lending environment has gone through so many changes over the last decade, I've had to revise my opinion about the ultimate consumer debt solution. In other words, bankruptcy may not be such a bad alternative. Here's why:

Bankruptcy, the Scarlet Letter: Taking a bankruptcy used to have a far more damaging long-term impact on a consumer's ability to obtain credit in the old days. But those days started changing in the mid-1990s; lenders started realizing that with more and more consumers seeking refuge in the bankruptcy courts, their

abilities to only lend to those individuals with spotless records was dwindling.

The actual default rate (number of consumers that find themselves in financial trouble again) for consumers who have emerged from bankruptcy is lower than the rest of the pack. Why? Two popular theories make sense:

- a) They've learned their lesson. Consumers who have survived the "heartache" of bankruptcy are more determined to prove themselves as solid credit risks, and will be more responsible the second time around.
- b) Since they've unloaded their debts in bankruptcy court, they've got more money to pay their new creditors. Makes sense to me—if you've discharged all of your high-interest rate credit cards (and other defaulted debts that are making your life a living hell), you're starting with a clean slate and a capacity to balance your budget after starting over.

Do the Math, Part One: The credit card companies are finding new ways to pile on the fees and force consumers into an early grave or bankruptcy court, whichever comes first. According to an April 2002 article in *Credit Card Management* magazine, "When it comes to late fees, Citibank, MBNA and Discover are a lot like Christopher Columbus. In their world, things are no longer flat. The three big [credit card] issuers have discovered a new world of tiered-fees for late payments ... and reinforce their increasing reliance on late fees as an important source of revenue."

In September 2002, the *San Francisco Chronicle* reported the nation's largest issuer of Visa credit cards, First USA, quietly began showing their better and more reliable cardholders how much they thought of them by changing due dates, reducing grace periods from 25 to 20 days. Why? To generate more income from late fees, of course.

It adds up: Interest rates that border on usury + Over-limit fees + Late fees = Formula for a credit card industry that's doing everything in its power to generate profits by forcing consumers into holes they'll rarely dig out of.

Their multi-tiered late fee structures throw out the old "You're late—that'll be a \$29 late fee" system for one touted as "more fair": charging \$15 late fees for consumers with balances of up to \$100 (you're kidding, right?), \$25 late fees for balances of \$100.01 to \$1000, and \$35 for balances over \$1000.01. MBNA (being the trail-blazer that they are) is pushing these limits even higher, to \$35 for the over-\$1000 balance crowd—the majority of their cardholders.

And the harsh, cold reality? Their \$25 or \$35 fee isn't the end of the world. But it's the collective, monthly onslaught of high-interest rate balances combined with a laundry list of add-on fees that virtually assure the average consumer's inability to ever pay off these debts. After throwing thousands of dollars at an account over the years without seeing any real reduction of the balance owed, they're whipped. And they're ready to flush everyone in bankruptcy court.

Before we get too far away from the ever-popular "When a cardholder files for bankruptcy, the credit card companies have to pass along those losses to consumers ... so everyone pays!" line of defense from the banks and credit card industry, let me try to give you two little shots of perspective.

They're right: When a consumer erases their debts in bankruptcy court, the rest of us end up covering the losses. But do you remember the credit card industry passing along lower interest rates to consumers after eleven Alan Greenspan-initiated "Fed Funds" rate cuts during 2001-2002? Nope! Actually, all the credit card companies ended up doing was to increase the "spread" on their loan portfolios. "Spread" is another banking term for profit; it reflects the difference between their cost of borrowing money and the profit from lending it at a higher rate (minus overhead and associated expenses). In other words, they're profiting off you both ways—when they have to pay more for their money, and when they have to pay less.

And let's talk about associated expenses, shall we? Let's talk about the salaries and bonuses to the executives running these companies. You're already painfully familiar with the biggest names in the credit card world: Capitol One, MBNA and Provident instantly come to my mind. These three companies have been among the most aggressive in their marketing efforts, offering high-interest rate cards to non-creditworthy consumers. They've been right there with the rest of the rogues' gallery of legal loan sharks, spending hundreds of millions of dollars lobbying lawmakers in Washington to change the bankruptcy code to protect them from "irresponsible debtors."

Although these banks are crying the blues about rising losses, business must not be too bad judging from a quick look at their executive compensation for 2001; I'll betcha Capitol One's top five executives aren't carrying any balances on their personal credit cards; they were paid over a quarter **billion** dollars—\$264,568,160 to be exact. The lion's share of that went to their Chairman and CEO, Richard D. Fairbank. He pocketed a cool \$142,231,274 alone. Yes, you're reading that correctly—he was paid more than \$142 million for one year.

MBNA's top five paid leaders raked in \$127,761,206, and here's a number that's the most amazing of all. Financially troubled Provident—even with all of those gosh-darned cardholders flushing them in bankruptcy court, and despite being watched closely by bank regulators—was apparently healthy enough to reward their top two executives a paltry \$16,229,328 in 2001. (How were they ever able to show their faces at the country club every weekend?)

Why do I care what these guys are being paid? Capitalism's what America's all about, right? Sure. But don't dare complain about getting hammered by "excessive loan/credit card" losses caused by supposedly weak bankruptcy laws—and then quietly pay out \$408,648,694 to these twelve guys alone. In fact, the top 30 credit card executives in the nation were rewarded a whopping **\$605,486,420** in 2001, despite all those irresponsible consumers taking the easy way out.

Just thought you'd like some perspective.

Do the Math, Part Two: Save your time and effort firing off e-mails about this one. Oh my God! Post-bankruptcy consumers are going to pay higher interest rates. Yes, for a while, they will. But before you blow your brains out, let me challenge you to do the math:

Let's say John Galt's got his credit cards juiced up to the limits, and then some. Aside from the average interest rate of 24% he's paying, including the occasional late and over-limit fees, his total credit card balance of \$33,000 is costing him thousands of non-deductible dollars in interest. At the \$660-a-month pace he's repaying, he'll have these balances retired in approximately 31 years.

John decides to get on with his life and "re-structure" his debts in bankruptcy court. After discharging his \$33,000 in high interest/non-deductible debt, his revised monthly debt service is now, zero—as in 24% interest on a zero balance. Paying off the \$33,000 balance over the next 31 years would mean John throwing \$245,625 down the toilet. Oh well. Time to move on.

You're right, John's going to pay higher interest rates—but not for the rest of his life. Instead of being able to get the highly promoted 2.9% interest rate on that new car, he might end up paying 9.9% on a net balance of \$20,000 financed over the next five years. And yes, instead of qualifying for that sexy, low-interest rate of 6% on a home mortgage, he's going to have to come up with a higher down payment—3% or 5% or 10% down—and pay a 10% to 12% interest rate on that new mortgage.

Then again, since John already knows he's in deep doo-doo, he can do a little pre-bankruptcy court

planning—all legal and within the letter of the law—and acquire that new car before he pulls the ripcord in bankruptcy court. He can secure a low-interest rate and get the new set of wheels that he's going to be needing anyway, thus avoiding getting jammed in a post-bankruptcy acquisition. Same goes for buying a home, although his debt-to-income ratios would probably either lock him out or force him into a higher rate, anyway. Since John's got more important things to worry about, he probably doesn't need to be worrying about the rate he'll get on a mortgage.

And since more and more mortgage companies are embracing post-bankruptcy consumers, he won't be paying high mortgage rates forever. Between re-financing and the natural lapse of time, post-bankruptcy, John will come out far ahead of the game, even with a bankruptcy in his (not so sordid) past.

Why You Might not Want to Seek Refuge in Bankruptcy Court

What do you do for a living? If you're still trying to figure out what you're going to do when you grow up, bankruptcy may limit your options down the road. Historically, industries that require any type of bonding or extensive background/security check may pass on you as a future employee because of a bankruptcy.

Taking a perfectly legal route to remedy your financial problems can impede or permanently destroy your chances for employment in certain industries—which is actually pretty silly when you think about it. Ask the

FBI: Super spies like Aldrich Aames and Robert Hanssen certainly didn't appear to have any financial problems on their credit reports. Why? Because they were selling our national security secrets for hard, cold cash (rubles) to cover their debts and fuel their "lavish" lifestyles.

Sorry folks ... once again, faulty logic's not working for me. Someone finally deciding to take the bull by the horns and discharge their debts in bankruptcy court may appear to have fewer morals/ethics/scruples because they chose to take this route. But then again, maybe they're the "real" realist.

They're the ones that recognized they were in too deep and instead of robbing Peter to pay Paul or resorting to other means to make ends meet or keep up appearances, chose to take what ultimately may be the toughest route. They chose to admit they were buried, and took the legal remedies available to all of us. So explain to me one more time why these people would be considered bigger risks? Well ... I guess the credit card companies figure that if they did it once, they'll do it again.

It's not my job to change the way the system thinks. I'm just trying to just change the way you think, by opening your eyes.

You may not be able to get a job at any substantial/high level in the banking industry. You might not be hireable for a position that could require you to handle a bunch of cash or inventory. You might not be able to get your law license in some states unless or until you get your outstanding obligations settled. But for the most part, these circumstances are few and far between.

At least you've got the chance to make a choice on your terms now ... instead of later, when it's too late and out of your control. Bankruptcy's been around for a long time, and even though the credit card companies are working overtime and spending hundreds of millions of dollars to get the current laws changed to protect their own bad business decisions, modern bankruptcy isn't going anywhere. And its roots run deeper than you probably realize.

The Origins of Bankruptcy

Bankruptcy's been around for a long time. It's mentioned in the Bible: Chapter 15 in the Book of Deuteronomy calls for "the release of all debts every seven years." Ancient Roman law also provided a form of bankruptcy. Today's bankruptcy laws, however, go back five centuries. Under King Henry VIII, England passed an array of laws in 1542 that serve as the basis of today's U.S. Bankruptcy Code. The word "bankruptcy" originated from the Italian term "*banco rotta*," meaning "broken bench." According to early Italian tradition, when a tradesman or merchant couldn't pay their debts, their workbench or display table was broken and put on display as a symbol of their failure.

Where You Live = How Much You Get to Keep

As far as the majority of consumers are concerned, there are two types of bankruptcy. What consumers can keep and shield from creditors varies from state to state. Bankruptcy laws are federally administered, so in the spirit of "states' rights," each state retains certain exemptions

that give debtors additional rights and abilities to protect additional assets.

Texas and Florida are infamous for being the most forgiving to consumers who have stubbed their debt-laden toes. The clowns of Enron in Houston have put an unwanted and unwarranted spotlight on the bankruptcy laws, needlessly fueling debate in Washington about bankruptcy reforms.

But here's the harsh cold reality of Bankruptcy 101: Few debtors in bankruptcy court have anything of value to shield. It's a fact that's been confirmed over and over by scores of bankruptcy attorneys I've interviewed over the years. "By the time they come see me they've already spent all of their cash, sold all of their liquid assets and even drained their IRAs or 401Ks [retirement accounts], creating even bigger messes and (tax) liabilities that they've gotta try to settle as they go through the [bankruptcy] process," says Dallas-based bankruptcy attorney Louis Shaff.

His partner, Neal Prevost, agrees: "I admire consumers trying to do the right thing—but they create many long-term tax liabilities as they try to do the right thing. The fact is that all of these assets could have been legally protected from creditors, and they could have emerged from bankruptcy with all of their retirement funds intact and zero tax liability. But because they tried to keep their boat floating longer by paying the debt collectors with money from their tax-deferred, creditor-proof retirement nest eggs, they've created a whole new set of headaches facing them when we get to court."

These challenges are not insurmountable, but they **are** unnecessary. Although most states aren't as forgiving to debtors as Texas or Florida may be, practically all states give debtors more protection of their assets than the typical consumer realizes—and certainly more than any debt collector would ever reveal. Let me remind you that I'm not an attorney, so I'm not going to set myself up to get popped for practicing law without a license. I urge you to get off your butt and seek **qualified** counsel from an attorney that handles bankruptcies for a living. Now let's take a quick look at the options on your bankruptcy menu.

Types of Bankruptcy

Chapter 7 bankruptcies are also known as "straight" bankruptcies or "liquidations." I call them the "royal flush" since you're literally flushing all of your unsecured creditors in court. This means that under the current bankruptcy laws, all of your unsecured creditors, mostly your credit cards and most judgments you may have against you, are about to be a distant memory.

You're not going to lose your house and you're not going to lose your car, unless you're behind on your payments, since these are secured debts.

You're probably not going to lose your retirement assets, but since the rules vary state-to-state and can be impacted by your marital status, age or even physical condition, this is where qualified counsel pays for itself many times over. (In many states you'll get to protect more assets if you're married, if you're older and if you've got

some physical challenges/handicaps. So it actually can pay to be old, married and using handicapped parking.)

Don't plan on easily shedding any IRS obligations or student loans, although some taxes can be discharged in bankruptcy court. Learning a foreign language and moving out of the country is about your only real alternative if you're hoping to unload your student loans. Bankruptcy court may effectively negotiate and/or eliminate many late charges or collection fees on both, but there are some debts that can't be erased. Proper counsel and pre-planning are a must.

Chapter 13 bankruptcies are also known as "wage earner" plans, allowing debtors to "adjust" their debts and work out revised repayment schedules (blessed and administered by the court's trustee) for up to five years from the date of acceptance of the plan by the creditors and the court.

Like a Chapter 7, debtors are protected from lawsuits or garnishments and other creditor actions while under court supervision and for the duration of the plan. The only (current) catch for debtors seeking refuge in a Chapter 13 filing? They've gotta have a regular income—meaning commission-only salespeople are probably unable to qualify for this plan.

The only real benefits of taking a Chapter 13 are:

1. If you've already taken a Chapter 7 in the last six years, you're ineligible to file another Chapter 7 protection plan ... but you can file a Chapter 13 petition to gain relief from aggressive creditors.

2. If you have "non-dischargeable" debts such as most types of student loans or judgments resulting from criminal negligence or fraud, but you can file a Chapter 13 petition to gain court-protected relief.
3. Debtors are allowed to cure defaults on long-term debts such as mortgages or automobile loans/leases.
4. The co-signor on a defaulted note is protected.
5. Certain "non-exempt" property that would have otherwise been liquidated by the courts in a Chapter 7 are protected.
6. Chapter 13's stay on your credit report for only seven years; Chapter 7's can be reported by the credit reporting bureaus for up to ten years. Is this an advantage?

I'm not impressed. If you're gonna take a bankruptcy, take the Chapter 7 and get it over with—and get on with your life. Seven or ten years—what's the big difference? A bankruptcy's a bankruptcy. Getting your problems behind you should be your most important goal.

Please do not rely solely on my opinion; always seek qualified legal counsel before you make any major decision.

Take the 7!

If you've reached the breaking point and have made the decision to "pull the pin" and lob the ultimate legal grenade into your den of creditors, then finish the job and take the Chapter 7 over a 13.

Chapter 13's are more expensive on several levels: Not only are you having to negotiate a settlement and payout with your creditors, you're also going to have to pay the freight for your attorney to walk you through the entire five-year-plus ordeal. Throw in the added cost of paying the bankruptcy court's trustee for their supervisory role during this period, and it can be a lot more dough in the long run.

A bankruptcy is a bankruptcy is a bankruptcy. Once you file, you've filed. It's on your "permanent record" (not as serious an infraction as it used to be in the old days) forever. If you filed a bankruptcy and later withdrew it, it's still on your record. If you flushed everyone in a Chapter 7, it's on your record in the same black-and-white as a Chapter 13 is.

The reality according to Dover is simple: Don't drown in the undertow of guilt if you've got to file for bankruptcy. Don't be deluded into thinking that because you chose to repay your creditors in a 13 instead of flushing everyone in a 7, it will earn you "brownie points" on future credit report—because it won't. The fact is that almost all of your unsecured creditors will never even show up in bankruptcy court.

Bottom line? Take the Chapter 13 route only if you have to. If you have too many assets, are about to lose a house in foreclosure or you make too much money, you may have no choice but to take the 13.

Other Types of Consumer Bankruptcies

Even though most of you will never have to worry about these other bankruptcy options, in the interest of semi-responsible reporting, I've got to at least mention them:

Chapter 12—similar to Chapter 13, except that it specifically relates to Family Farm Reorganizations and financial circumstances unique to ranches and farms.

Chapter 20—is a term you'll never find in the U.S. Bankruptcy Code. Sometimes attorneys will file a Chapter 13 bankruptcy petition to buy their clients time (especially with secured creditors such as mortgage lienholders), then let the dust settle and convert the filing to a Chapter 7 liquidation. (Get it? Chapter 13 + Chapter 7 = Chapter 20.)

Dispelling the Most Common Debtor Misconceptions

Misconception Number One: "The only way I can get my creditors to stop calling me is to file for bankruptcy!"

Dover's Reality: Wrong. In most cases, debtors are having to endure debt collector harassment—not creditor harassment. There's a huge difference; once you've read *Back Off!* a couple of times, your fears will evaporate—as will the threatening phone calls after you've fired out a few Cease & Desist Letters and terminated the third-party debt collector thugs. When you realize that you've got the upper hand (you always did, you just didn't know it) once the Cease & Desist Letters begin hitting their targets, you'll breathe a little easier.

If you can't stand the heat created by the onslaught of debt collector or original creditor phone calls, what's stopping you from leveraging today's telephone call screening technology? What's stopping you from getting a post office box and redirecting all of your mail—and their threatening letters—to a box instead of your front porch? There's a slew of "bulletproofing" ideas like these (and many more) in the "Covering Your Assets" chapter later in this book.

Misconception Number Two: "Some of my credit cards are paid off, but I still have some with small balances that I've been paying on and want to keep. I want to continue to pay off the small ones and flush my big balances in bankruptcy court."

Dover's Reality: What are you, high?

First off, it's increasingly common for credit card companies (or charge card companies like American Express) to routinely "spot-check" a cardholder's credit reports to see how they're doing and limit potential exposure if their financial situation appears to be deteriorating. American Express is famous for canceling a cardholder's account or credit lines if they appear to be in financial trouble, even though the cardholder's in good standing with Amex.

Secondly: You've got to list all your outstanding creditors when you file your bankruptcy petition. This means that even if you owe XYZ Visa only \$20, they've gotta be listed. I guarantee you that once that creditor's notified that you've filed a bankruptcy petition, you can kiss your card goodbye.

And finally: Once you run the white flag up the bankruptcy flagpole, you're giving up your right to choose who gets paid and when. You lose your right to selectively keep certain obligations, and if a judge or trustee detects any illegal game-playing from your side of the table, you could end up getting hammered with a charge of "Substantial Abuse" and risk having your entire bankruptcy petition thrown out. (And you just thought you had problems before. Believe me, this is something you want to avoid at all costs.)

Misconception Number Three: "I was told that I'll lose my car and my home if I file for bankruptcy!"

Dover's Reality: Unless you're in default on either loan, I doubt it. But since each situation has its own unique twists and turns, don't take my word for it. That's why you're gonna retain qualified bankruptcy counsel, right? In the meantime ... relax. And try to get a little perspective on who's telling you what. If it's a debt collector planting these seeds of fear in your brain, you've gotta consider the source.

Final Thoughts About Bankruptcy

Sometimes taking a bankruptcy is the only prudent way out of a financial jam. Being buried in high-interest rate credit card debt is the main reason—and once you recognize that you're never gonna dig out unless you inherit well or know the six winning numbers in your state's next Lotto drawing, your choices are few and far between.

If you've got a big judgment against you, that's a viable reason to pull the pin. Maybe you did what I did in the 1980s and make the mistake of signing with personal liability on some corporate debt obligations. Or maybe you got hit with a big judgment in civil court—perhaps the result of an unfortunate set of circumstances, like the woman that ran me over me while I was on my motorcycle in 1989. She hit me, I flew over the car 85 feet and landed on both knees, both elbows and my head. Twenty hospital visits and 12 surgeries later, I got my day in court, and she got whacked with a \$723,000 judgment.

Did it do me any good? Nope. She filed for bankruptcy protection before the ink was barely dry on the judgment, and I got flushed. Except for a bunch of scars and enough screws to occasionally set off an airport metal detector, I didn't get a penny out of her. Why'd she file for bankruptcy? Because she had to.

She (and her attorney-husband) knew that, as angry as I was, I'd hunt them down at every turn, find every bank account and every exempt asset of theirs that I could lay my hands on and seize them to settle "the score." They knew I'd be their worst post-judgment nightmare, and they took the smartest (and only) route possible that would neutralize me forever. If the roles were reversed, I'd have done the same thing.

I've had several friends in the real estate business seek bankruptcy protection because the holes they'd dug themselves into were either so deep, or their creditors so adversarial, that they had no choice. But most of these people were savvy businessmen who were able to legally shield assets through the process. They were the great

exception to the rule: they had excellent foresight, good legal counsel and sufficient lead time to prepare for their unfortunate turn of events, and emerged with the lion's share of their assets intact.

Is this wrong?

Again, let me remind you that it's not my job to pass moral or ethical judgment. But it is my job to inform you about your federally guaranteed rights, with a few state-flavored twists thrown in. It's up to you to make your own decisions.

Since the majority of you will consider taking a bankruptcy to stop harassing phone calls from bill collectors, let's try to work out of your situation first by regaining control of your situation.

Let's go fire some debt collectors!

DEBT COLLECTORS: TODAY'S TELE TERRORISTS

*"He'll cheat without scruple,
who can without fear."*

Benjamin Franklin

Remember actor Don Knotts' classic character Deputy Barney Fife on *The Andy Griffith Show*? He was the embodiment of the classic "little-man" intimidator: The bluster ... the puffed-up chest ... patting his trusty revolver. Rolling out the bottom lip after flexing his enforcer muscles in that thriving hotbed of crime and civil unrest, Mayberry, North Carolina. Barney loved to let everyone know he was in charge, and every time I see his character, I always think about the typical debt collector.

Because you're reading these words right now, my guess is that you already know exactly what I'm talking about. You've gotten their phone calls and endured their ultimatums and threats. Their goal is to break you while enhancing their commission-heavy paychecks. Have you heard any of the following threats yet?

- The sheriff/police will show up to arrest you at home or at work.
- They'll take any conceivable criminal action against you or your family.

- They'll get the court to turn over custody of your children.
- You'll lose your car or your home.
- You'll be humiliated unless you give them exactly what they want.

You think I'm kidding? Roger Young is proud of his role as a tele-intimidator. In a March '99 interview published by Wired.com, he provided a boastful look inside his world: "Hi, this is Roger from CBSK Financial calling about the \$2,000 you owe Corporation X," he'll begin on a typical call. "The purpose of my call today is to find out if you've put that check in the mail.

"After you've introduced yourself you go silent," he explained. "Just let your statement hang in dead air until the debtor gets flustered ... it makes him more receptive to your suggested payment plan. There's psychological power in that pause." And there are even more mind games waiting to be played. Thanks to the Internet and access to some of the most potent databases out there, he's got enough personal information about you to "push the right buttons to prompt a sudden willingness to pay up. It all comes down to knowledge as power, and our data really makes us pretty powerful."

Roger's right—knowledge is power. Unfortunately for Roger and his friends in the debt collecting world, the knowledge you're now hearing will completely neutralize his "power." They really can't do anything to you—they can't do anything more than go to civil court and get a judgment. If they have a secured interest in real property (like an automobile or a home loan), they can repossess or foreclose on the financed item if you're in default.

Many states allow creditors to garnish your wages. (Key word: *Creditors*, not debt collectors, can garnish wages, and only then after they've gotten a judgment.) But once again, it's worth remembering that they can't get blood out of a turnip. If you can't pay, **you *can't* pay**. And it's costly to go to court and costly to hire an attorney that will jump through all of the hoops necessary to garnish your paycheck.

Wanna Arbitrate?

Of course, we can always depend on the credit card industry to make the most progressive changes when it comes to handling defaulted accounts. Instead of having to go through the traditional brain damage of hiring attorneys to sue and force collection, the credit card companies recently decided to do something I call "changing the rules at halftime." In their monthly statements, they quietly inserted notices written in small-print legalese stating, in essence: If you default on your credit card we don't have to sue you, we can choose to *arbitrate*.

It's cheaper (for them) and they know that in almost every case, you'll never show for the arbitration hearing, anyway, so they'll slam-dunk you with a judgment and turn the dogs loose to collect. But let's revisit your reality:

- If you're self-employed, it's gonna be tough for them to garnish your paycheck, isn't it?
- If you're in commission sales, it's almost as tough.
- And if you work in the food service industry or construction-where a large percentage of the

business transacted is in cash-good luck
collecting, boys!

Of course, if all else fails and you end up getting popped with judgments, garnishment and turn-over orders, there's nothing to stop you from discharging all of them in bankruptcy court! As stated in the last chapter, bankruptcy's not viewed in the same negative light it used to be. It's an effective (and legal) defensive weapon you should consider using, or at least threaten to utilize.

You should always try to avoid a lawsuit or arbitration. If your creditors decided to take it that far, there's a good chance they'll push it all the way home and try to hammer you with wage garnishments or go after any assets within their grasp. But in most cases you'll have plenty of notice before it *ever* gets that far. The main purpose of this book is to show you how to keep your situation from deteriorating to that point; you do this by removing the cancer (debt collector) that's making your life hell.

Greed Drives the Collector

The debt collection industry is fueled by greed-and if misery enjoys company, you're going to feel better in a few seconds. According to ACA International-The Association of Credit & Collection Professionals (the lobby group of the collection industry):

- More than 6,500 collection agencies and 1,600 credit reporting agencies service an estimated \$135 billion in delinquent consumer debt placed for collection in 2000; by the time you read this,

the number will have doubled the \$73 billion placed for collection in 1990.

- The debt collection industry generates approximately \$13 billion in revenues in the United States alone.
- Contingency collection (the collector only gets paid when you pay) activity makes up 58% of the total market revenue.

So now that we've defined the size of the pie, I'm going to show you how it's split and why that voice on the other end of the phone is so aggressive. Billions of dollars worth of uncollected accounts are being dangled out there for the 100,000-*plus* debt collectors across the country, making the incentives fairly obvious. Because the majority of third-party debt collectors are paid on some sort of commission schedule, it's easy to understand why so many of them rely on strong-arm "techniques" the industry claims rarely occur.

You eat what you kill: The "better" collection agents pull down six-figure annual incomes. The following example illustrates why.

Let's say you owe Kramer's Department Store \$1,000. The account receivables department at Kramer's (as a matter of company policy) will attempt to collect overdue accounts for 90 or maybe even 120 days before they throw in the towel and deem your account as an "uncollectible" or "charge-off."

IMPORTANT NOTE #1: If the collection department at Kramer's is trying to collect your overdue account, none of the Cease & Desist letters in this book will work, since

Kramer's is the original creditor. They're entitled to collect what you owe them and can continue to call; the strategies outlined in *Back Off!* work only when dealing with outside, third-party debt collectors.

IMPORTANT NOTE #2: Also worth noting—and I'll remind you of this point again later in the book—is that the strategies outlined in *Back Off!* and the sample Cease & Desist Letters provided work only for defaulted consumer debts. They will not work for non-consumer debts—bills you may have run up for a business. Only the collection of consumer debts such as credit cards, medical bills, etc. are covered by the Fair Debt Collection Practices Act.

On the "in-house" accounts receivable level, the fuse length for collecting overdue debts is fairly predictable. They'll rarely waste their time trying to collect past-due accounts that are older than 120 days, although some instances of keeping these types of accounts for up to 9 months have been reported. Whether they kick it out after 60 days or 6 months, sooner or later they'll wash their hands of the matter and assign it to the third-part debt collector once they've classified it as an uncollectible.

Once it's in the uncollectible category, they'll now "charge off" the account. This means that now they'll deduct the money you owe them as an expense by putting it into their "Bad Debt Expense" accounting category and offset their taxable income. Usually simultaneous with this accounting move, the original creditor will report your overdue account as either Uncollectible, Charged Off or a Collection Account to at least one or more of the national credit reporting bureaus (Experian, Equifax or TransUnion). Now you're stuck with this negative

information on your credit report(s) for at least 7 years, and maybe longer if you handle this situation incorrectly. (Invaluable tips on this key piece of the bad debt puzzle come later in the book.)

When Kramer's charges off your account, they'll pool it with other overdue/defaulted accounts and assign it to a third-party debt collection agency—maybe a local firm, but more than likely, one of the big national companies.

Your account ends up in the hands of Newman's Collection Agency, with the understanding that Newman's will collect as much money as they can, as quickly as possible. The account has been turned over to be collected on a contingency—also known as "Best Efforts"—basis. This is a crucial point to remember, as I'll explain in a moment.

Hellllllloooooo, Newman

Your Kramer's charge account was assigned, not sold.

Even though it's not as rare as it used to be for debt collection agencies to own accounts they're trying to collect (meaning they actually purchased the defaulted account from the original creditor), in most cases the accounts are being collected on the previously described contingency basis.

When your account's assigned to a third-party debt collector, that's when the powerful information contained in *Back Off!* comes into play. The heart and soul of this book revolves around an extremely potent federal law

that's been in force since 1977; this law is known as the Fair Debt Collection Practices Act (or FDCPA). I'll discuss the FDCPA in much greater detail in Chapter 8.

In this example, when your Kramer's charge account was assigned to Newman's Collection Agency, they assigned the account to one of their top collectors, a guy we'll call Richard Head.

Mr. Head has plenty of incentive to collect the account for Kramer's Department Store—in this case, about 250 reasons. Assuming you repay the \$1,000 you owe to Kramer's, by way of Mr. Head and Newman's Collection Agency, here's how the money would be split:

\$500 returned to the original creditor,	
Kramer's Department Store	50%
\$250 kept by Newman's Collection Agency	25%
\$250 earned by Richard Head,	
collection agent, as commission earned	25%

Not only is your new best friend Richard Head receiving a nice commission for harassing you on the phone several times a week, perhaps even daily, but to add further insult to injury, ol' Dick's gonna put some negative lines of information on your credit reports that will haunt you for a minimum of 7 years.

The not so obvious but better idea? Eliminate Mr. Head and his pals at Newman's Collection Agency from the collection loop forever by invoking federal law with my Cease & Desist (C&D) Letter.

Once you drop the first third-party debt collection agency (Newman's) in the grease with the C&D, the original creditor (Kramer's) will either agree to work things out with you, or reload and assign the returned account to another outside, third-party debt collector.

If this happens, you simply reload and fire off another C&D to the new debt collection agency and cut them off at the knees—just like you did Mr. Head and his pals over at Newman's Collection Agency.

The bottom line? (You should **never** deal with debt collectors.) Only deal with the original creditor, because that's who you owe the money. More importantly, the original creditor is the only party with the ultimate control over the information being reported on your credit reports for years to come.

The Rules Have Changed to Encourage Settlements

Fortunately, the Fair Credit Reporting Act [FCRA] was modified in the late 1990s to eliminate the disincentive of paying off a charged-off account. According to Maxine Sweet, Senior Vice President of Experian:

A creditor or collection agency may no longer "re-cycle" the seven-year reporting clock and re-age an old account on your credit reports. An account may only be reported for seven years from the commencement of the delinquency date or the time at which negative information will be deleted.

Of course, what Maxine says and what happens in the real credit reporting world is, quite often, light years apart.

No matter what anyone may promise over the phone, *always get the terms of any settlement deal you make*—especially when it comes to the post-payoff credit reporting of the account—in writing. There's more about this in Chapter 11, as well as a sample letter, for this purpose, located in Appendix D (Don't skip ahead or you're going to miss a slew of crucial information that you've got to know before you start firing off letters!)

It Pays to Be an Intimidating Tele-Terrorist

WANTED: Motivated individuals who love to intimidate total strangers. Casual work atmosphere and flexible hours; successful agents can make six-figure incomes. Must enjoy disrupting the lives of people already facing difficult times; contact Richard Head, Director of Ethics at Vito's Collection Agency.

If I were going to write the perfect "Help Wanted" ad for their industry, I think this would be a fair representation of the typical (third party) debt collection agent. Re-read this ad and you'll realize that I'm really not exaggerating my take on what these people do for a living. And the outlook for the collection industry is positive:

- According to the Bureau of Labor Statistics, employment in the collection industry is expected to increase by 35% or more by 2008.

- According to the ACA International, in the year 2000 the typical debt collector attempted 33 phone calls per hour.
- According to the ACA International's 2000 Top Collection Markets Survey, the automotive industry (sales & service) had the highest recovery rate with 65%; child support collections had the lowest recovery rate of only 2%. (Moral of the story? Apparently debtors will more readily pay for their car that's just been repossessed than for their own flesh and blood. Sad, but according to these numbers, true.)

Do the math:

If an average, semi-aggressive debt collector attempts 33 calls per hour (working an 8-hour day), that's 264 calls attempted every day.

Let's assume they hit on 10% of them. That's 26 live accounts they've got "in play" per day.

Assume a five-day work week. That's 130 active accounts per week. (Stay with me.)

Assume they can only effectively handle so many accounts, since they're always having to make follow-up calls to get people to pay, and many of those folks will disappear. So, for this example, let's assume they've got 350 accounts that they're actively maintaining/contacting on a monthly basis.

Out of the 350 accounts, let's assume a third of them are actually paying (117 suckers unknowingly coerced by the debt collectors).

Let's say they're paying \$75 a week or \$300 a month, generating almost \$35,000 in collections for the agency every month. The money trickles down as outlined earlier:

\$35,000 gross collection dollars a month	
- <u>\$7,500 returned to the original creditor/client</u>	<u>50%</u>
\$17,500 commission retained by collection agency	
\$8,750 retained by "The House"	
(collection agency)	25%
\$8,750 commission earned by	
individual debt collector	25% - or -
\$105,000 estimated annual earnings by	
individual collector	

These numbers can be spun a thousand different ways. We can increase the number of actual consumers contacted (higher than 10%) or lower the average dollars collected by each live account, or any number of combinations. But the fact is that the more aggressive debt collectors can make a pretty decent living.

Off of *your* misery.

Ohmygod! An Attorney Is Harassing Me!

Uh-oh. You've received a collection letter from a law firm—your worst nightmare's come true. The lawyers are after you! Now they're gonna sue you for sure.

They'll call your boss, they'll call your neighbors, they'll repo your car (even though you're not late on your payments), they'll have you thrown in jail, they'll—

Wrong ... just relax. Here's the good news:

Attorneys who routinely collect debts as a regular part of their business are regarded under this incredibly potent federal law [FDCPA] as a third-party debt collector. This means their activities are also regulated by the same laws that rein in those bottom-feeding, tele-terrorist, third-party debt collectors. This also means that you can fire them with the same Cease & Desist Letter located in Appendix B of this book.

Before you go *too* crazy and start firing off these letters to anyone who knows your name and address, you've gotta recognize a *very real danger whenever you're dealing with attorneys who specialize in debt collection*: It's easier (and cheaper) for *them* to go after you and file a lawsuit or push their new toy of the collection world, arbitration, than non-lawyers.

Of course, I'll always take you back to the key trump card of the creditor-debtor-collections equation: You *still* can't squeeze blood out of a turnip. If you had the money, you would have already paid 'em—right? Of course you would. So while attorneys can always sue you, or play the arbitration card, in many cases they won't.

Either it's not cost effective—something all collectors can figure out pretty quickly after dissecting your credit report during the collection process—or they'll have

"standing orders" from their client (the original creditor) to return your file if you "invoke the law" (send them the C&D and invoke the FDCPA). Another trigger for closing and returning the file is if they're contacted by an attorney representing you—in most cases, a precursor to filing bankruptcy.

I've seen debtors owing thousands of dollars—as much as \$20,000 or more—threatened with a collection action that was never followed up. Then again, I've seen creditors sue for as little as \$50, so go figure. And relax. Take the attorneys from the debt collection law firm of Dewey, Cheatham & Howe out of the game with the same C&D Letter located in Appendix B.

Not Every Collector Is Nasty

I wouldn't have a chance at maintaining my credibility if I claimed that every debt collector out there is a ruthless tele-intimidator. Because they're not.

Like any industry, there are going to be a few rogues who give everyone else in the same business a bad name. I won't attempt to estimate what percentage of the nation's third-party debt collection agents fall into the law-breaking tele-terrorist category because, frankly, it doesn't matter. Whether it's 5% or 95%, my position doesn't change: You don't deal with or pay off any third-party collection agent.

With that position statement in mind, don't let someone sweet-talking you over the phone lull you into thinking they've got your best interests at heart as they

offer to guide you through "the process" with your long-term financial security in mind.

The Wall Street Journal has run more than its share of stories over the last decade about banks and credit card companies attempting to take the high road, showing care, concern and compassion for delinquent debtors. In 1994 Chase made the news when they started sending out videotaped messages to debtors who had gone underground or, as they say in the collection business, "skipped." *"Even though you're in collection, you're still our customer. You're still #1 with us!"* was part of the message.

Of course I'd be willing to bet that if we "finished" their intended message, it would have gone something like this: *"You're still #1 with us, and will continue to be #1 on our scumbag list until you pay all of the money you owe us!"* Okay, so it's speculation on my part. But Chase didn't continue the program very long.

Here's another example. The brain trust in the collection department of Discover commissioned greeting card giant Hallmark to create a line of "we know you're having difficult times" theme cards over the last couple of years. Who knows if Discover's still sending them out? (And who cares?)

If the credit card industry spent as much time pre-screening potential cardholders as they do trying to clean up their delinquency messes from what frequently amounts to irresponsible lending practices, I'd sell a lot fewer copies of this book.

Credit Card Reality 101: Shut Up and Pay Us!

I frequently hear from consumers who have really tried hard to "do the right thing" and contact their creditors at the first sign of financial upheaval. Many of you think that this "first strike" phone call to the credit card company will show that you're one of the good guys and that you're a better risk than the typical deadbeats they're used to dealing with. It sounds good, but be warned: All of the phone calls and letters you send out to explain your situation—as well as your intentions—might make *you* feel good, but will wear real thin and real fast if you don't pay 'em what you owe 'em.

Do not send partial payments: Do not send "token" or "good faith" payments of \$10 to show that "you're *trying!*" because **they don't care**. By the end of this tumultuous chapter of your life you'll realize that all of that money you sent—with the intention of maintaining your credibility—was actually a waste of time and money. Before you try to rationalize that "*my situation is different,*" let me pre-empt your reason. Do any of these sound familiar?

1. You know everything's about to get back on track and it's just a matter of time before the cash will flow normally again.
2. You want to keep them from putting negative information on your credit report, and they've told you that as long as you pay them something, anything, they'll keep your horrible "secret" from ever making it to your credit reports.

3. You're afraid that if you stop paying them what you owe, they'll sue you.
4. You're afraid if you stop making the reduced payments you agreed to, they'll not only report all of this to the credit bureaus, but they'll also file suit against you.
5. You're afraid that they'll follow through on their threat of coming to your job and serving you with papers.
6. You're afraid they'll have you arrested.
7. You're afraid they'll have your children taken away by contacting the judge (a favorite to use against single moms).
8. You're afraid they'll have you deported (a favorite to use against anyone with a foreign accent or anyone that's not U.S. born).

And if I didn't cover your reason, it's only because I haven't heard it, or haven't thought of it ... *yet*.

Listen, you have **no idea** how long your personal financial hell is going to last. If you could tell the future, you wouldn't be in this situation in the first place. I know first-hand that when you're in this terrible position, time soon becomes (you think) your greatest asset. You just need a little more of it and everything will work itself out. Sorry kids, but sometimes, *many* times—**most** times—it just doesn't work out that way.

You lose your job.
You lose your spouse.
You lose your health.
You lose *it* ... **period**.

Your best intentions don't matter to the man or woman on the other end of the phone. What does matter to them is that they get some money out of you, because that's how they're paid. They'll tell you whatever it takes to get you to do it:

1. *"Wire me some money! There's a grocery store right near your house that's all set up for taking your payment by Western Union ..."*
2. *"Give me your bank account number and we can draft the money out of there..."*
3. *"Send me six postdated checks ..."*
4. *"I know you've gotta Visa card with some credit limit left on it; go to an ATM and get some cash and send it to me via ..."*
5. *"Borrow it from your Mom (or Dad) ..."*
6. *"You're married (even better if you're divorced, though); go pawn your wedding ring and send me some cash right now."*
7. *"Why don't you strap a mattress on your back and work for it that way."* (I'm not kidding about this last comment. I personally know that the person they said this to sued, and settled against, one of the bigger charge card companies in the nation for statements like this and worse that their ex-felon debt collectors used over the phone.

You think I'm kidding about what these clowns do in the course of their daily bill-collecting missions? Then either you haven't had any dealings with a debt collector, or you haven't been delinquent long enough to get to this stage. Sooner or later, you will and you *will*. Save your

cash ahead of time and plan for what could be the longest financial winter of your life.

The Golden Rule

Updated over the years, the real golden rule in the collections game sums it up pretty clearly:

He who has the gold makes the rules.

As an informed and empowered debtor, you're learning early (I hope) how the collection game's played and why you need to protect yourself. You've got to preserve your ability to weather this storm while protecting your sanity as well. **You** have the gold—or in this example, the cash. **You** make the rules—not some threatening voice on the phone or in a demand letter. Don't ever forget this.

You've got the gold—and you'll give it up when they agree to *your* rules. These rules will include:

1. What you'll pay,
2. When you'll pay it, and
3. How this whole mess will end up being reported (or not) on your credit reports.

Can you really do this? Absolutely. You've got the leverage. But remember that if you fail to get your deal clearly outlined in writing ahead of time, and then try to go back and "work something out" after you've paid them, you're wasting your time, because it's too late. You've lost the only leverage you had. Why should they agree to

anything with you once you've given them everything they want? You know the answer by now.

You negotiate how your account's going to be reported once you've paid them what you've mutually agreed upon: If the creditor's representative tells you that they can't change what's on your credit report—if they say something like "it's illegal for us to fail to properly report the history of your account"—then just remember you heard it from me first: they're **lying**.

Creditors will negotiate, but only informed (and tenacious, if necessary) consumers stand a chance. *"We don't like to advertise it, but we will reduce fees and interest,"* said Joseph J. Giuseffi, Chase's collections chief in the 1990s. *"We find that if you forgive fees and some interest, people are more likely to complete the repayment programs."* It's too bad they don't feel the same way in the 21st century.

The two key lessons from this chapter that you've got to remember:

Dover's Rule #1: The Golden Rule: He who has the gold (you) makes the rules. This means that as long as you've got what they want (the money) you decide how and under what terms it's paid.

Dover's Rule #2: Ask and you shall receive. (You've got a better chance, anyway.) You've got to take a shot and ask for terms that work to your advantage if you ever expect to work a deal in your favor.

Pulling Back the Curtain

I attended a collections seminar many years ago, and continue to receive information and propaganda from the collection industry. One of the recurring themes in all of the material they've churned out over the years actually reflects a concept I picked up in a real estate finance class in college:

*More is better than less...
but sooner's better than later.*

What does it mean? In any deal, you always want to get as much money as possible. However, cash is always king—and if you can get the cash sooner, either all of it up front or as quickly as possible, be smart, take less and get out before they either change their mind—or go broke altogether.

They will tell you whatever it takes to get you to part with your most precious resource. So don't believe everything (or anything) they tell you.

And be wary of organizations that position themselves as a helping hand there to pull you through the tough times. The minute they start playing the "we're a non-profit organization" card, you might be hearing the pitch of a modern-day wolf in sheep's clothing. (I'll explain this in greater detail in Chapter 5.)

"You mean it's possible that they may not clearly present themselves as a debt collector?"

Oh my, you do catch on fast, don't you? You're gonna love what's coming up in the next chapter.

YOU DON'T THINK THEY'D LIE, DO YOU? THE TRUTH ABOUT CREDIT COUNSELING & DEBT RE-NEGOTIATION SERVICES

*"It is always the policy to speak the truth.
Unless of course, you are an exceptionally good liar."*

Jerome K. Jerome

Well, at least they've got some competition ... *finally*.

Ah yes ... those "angels" whose mission statement is simple enough: To help financially troubled consumers get their act together. For years the folks from Consumer Credit Counseling Service (CCCS) not only had a virtual monopoly on the consumer debt marketplace, but a media spin campaign that still continues to sucker in naive or lazy journalists. Content to regurgitate CCCS's press releases that have consistently played on the "we're a nonprofit organization" theme, too many news organizations have fueled the pro-CCCS propaganda fires without asking some obvious questions.

But my, how things have changed since the mid-1990s.

The big banks and credit card companies created a huge debt counseling service industry while they were giving the American consumer all of the rope needed to financially hang themselves. What was once dominated by CCCS is now a crowded field of companies, each one crowing about their nonprofit status: Myvesta, AmeriDebt, Genus, Debt Counselors of America, Profina are a few of the notables. And by the time you read this, there could be dozens more.

For the life of me, I don't know why being a "for profit" company is such a dishonorable mission statement in the debt-counseling world. If you think the people running these "nonprofit" debt-counseling organizations are working for charity, helping you get your butt out of a jam as part of their therapy, or because they're trying to guarantee their spot in heaven, you're sadly mistaken. Perusing the IRS's website will only get you buried in technical jargon if you're trying to get an understanding of the motivation for choosing to work under the cover of a nonprofit.

However, I did stumble across the website of one company that specializes in the formation of all types of legal entities; their explanation of the benefits associated with a "nonprofit" or "not-for-profit" corporation was by far the easiest to understand. According to www.mycorporation.com, here are a few of the major advantages for operating a company as a "nonprofit," which may also be referred to by its IRS tax code section/reference number as a "501 (c) (3)":

Tax Exemptions: Under IRS Code Section 501 (c) (3), a nonprofit corporation is eligible for certain federal and

state tax exemptions. (With income tax rates as high as 34% on income over \$75,000, tax exemption status can be invaluable.)

Receiving Public Funds: Many organizations are required by law to donate a certain percentage of their funds to nonprofit organizations or possibly endanger their own tax-exempt status. In addition, many exemptions exist for property transferred at death to a nonprofit organization.

Limited Liability for Members and Directors: As with a general, for-profit corporation, directors, trustees, and officers of non-profit corporations are usually afforded the same limited liability status. Thus, creditors of the nonprofit corporation can only reach as far as the corporation's assets to satisfy corporate debts and not the personal assets of the people involved in the nonprofit corporation.

Separate and Perpetual Existence: A nonprofit corporation, like a for-profit corporation, is an entity with a perpetual existence that may outlive all of its founders. In addition, the corporation can act like an individual in that it can enter contracts, incur debt, and own property.

Employee Benefits: The principal of a nonprofit corporation can be employed by the corporation. As such, these employees can be eligible for fringe benefits not available to self-employed people. Examples of these benefits include sick pay, group life insurance, accident and health insurance, and corporate pension plans.

Other Advantages

- Nonprofit corporations under 501 (c) (3) receive lower postal rates on bulk mail
- Many organizations offer discounted advertising rates to nonprofit entities
- Many Internet service providers offer discounted rates to nonprofit corporations
- Many national chains (Costco, for example) offer lower membership rates
- Nonprofit corporate employees may qualify for job-training and other work-study programs subsidized by the federal government

Well hell yes! Why wouldn't you try to operate your debt (or credit) counseling business as a nonprofit? Not only do you get to mislead the majority of under-educated Americans that believe they're putting their personal affairs into the hands of a company that's not profit-driven, but you get to pick up a slew of assorted financial incentives and other perks along the way. And apparently it's not terribly difficult to qualify as a nonprofit ... good legal counsel always pays for itself, especially in this arena.

So why am I spending so much time and effort trying to educate you about the facts regarding "nonprofit" or "not-for-profit" debt/credit counseling companies? Because they use the term as one of their strongest selling points. You deserve to know how (and how much) they're getting paid. Which leads me to my next point. How do they get paid?

They're Glorified Debt Collectors

There are a few of us out there who have sniffed around long enough to know how the debt counseling game is played and how they're paid. I was happy to see Ray Martin, a frequent contributor to CBS's "Early Show," file a report on June 26, 2002, about this subject. From CBS's website, Ray's segment notes about credit counseling agencies (as posted on www.cbsnews.com) do a terrific job of giving you much-needed background on the topic.

First of all, they are not regulated by the federal government, and only 17 states have any laws that do regulate such businesses. This means that anyone can start up a credit-counseling or debt-consolidation company. The largest and best-known company is actually a national network of offices; member agencies typically use the trademarked name Consumer Credit Counseling Services.

Services offered by debt counselors: Some companies offer budget and financial-management education. Customers may sit down with a counselor and draw up an "action plan" to get out of debt. More often than not, however, the counselor will suggest a **Debt Management Plan**, or **DMP**. Instead of an individual trying to pay off several credit accounts each month, he sends one check to the counseling company, which then disperses the money among the creditors. The company also contacts creditors to request lower interest rates and/or lower monthly payments on behalf of the individual.

How do these debt counselors make money? Customers agree to pay a start-up fee, often called a "voluntary contribution," and monthly maintenance fees. Martin says

the average start-up fee is around \$20 and the monthly fees about \$12. Here's where things start to get a little sticky. Some companies charge as much as 100 percent of your first monthly payment as a start-up fee. In several newspaper articles, disgruntled customers said this fee was not made clear until they had sent in their first monthly payment and learned none had gone to creditors.

A June 17, 2002, *U.S. News and World Report* article described another common complaint: "*But after three months in AmeriDebt's program, the man was \$900 deeper in the red. AmeriDebt, he says, failed to pay his creditors on time, generating late fees and other penalties.*"

The biggest source of income for debt-counseling companies comes from credit card companies themselves. Creditors kick back a percentage of each monthly payment to the debt counselor. The creditors write this off as a debt-collection fee, assuming that they are getting more money back than if the cardowner went bankrupt.

This is the most important thing to remember when signing on with a debt counseling company: **The company is not there to help you!** The company wants to place you in a DMP so it can earn money from creditors. Credit-counseling agencies are all registered as nonprofits. Don't be fooled—this doesn't mean you're getting an advocate.

"What this amounts to is that credit-counseling companies are paid by creditors to be their debt collectors," Martin says.

Your Credit Report: It's important to keep in mind that the words "Managed by Credit Counseling Company" will appear under each account on your credit report that is involved in the DMP, Martin says: "This is industry code-speak for 'Credit Loser.' Also, if you fail to make monthly payments as agreed, that will show up as uncollected debt on your credit report for seven years—a red mark almost as bad as bankruptcy." Nice work, Ray.

More Insight ... From the Attorney General's Office

Perhaps you've noticed on the bottom of your credit reports, overdue bills or even "dun letters" that many times there's a promotional or "informational" plug, touting the potentially positive aspects of the services provided by CCCS.

When I was doing research for the first edition of *Back Off!* in 1994, I asked Stephen Gardner—a former assistant Attorney General for the State of Texas and the man who initiated a lawsuit on behalf of the State of Texas against TRW (now Experian) in 1991—for his thoughts about CCCS. His response:

"I think that Consumer Credit Counseling Service is intrinsically deceptive. They're funded or incorporated by the very people they're truly representing ... not the consumer/debtor but the creditors trying to collect the money.

"I think they're a con; they pitch themselves as serving the consumer's best interest but they don't. Their promotion practices are deceptive and the consumers are

being grossly misled. If they were lawyers, they'd get disbarred! Representing one party and acting for the other? Come on! Think about it—if lawyers won't get involved in an enterprise like Consumer Credit Counseling, you know it must be bad."

An article written by Mr. Gardner that appeared in the Fall 2001/Winter 2002 edition of *Advancing the Consumer Interest*, a publication of the American Council on Consumer Interests, further illustrates this point: "CCCS organizations often fail to disclose to consumers that they make money based on how much they persuade consumers to pay their debts. CCCS organizations call this a 'fair share' contribution. A more honest description is 'kickback.' The standard kickback obtained by CCCS organizations is 15% of the amount collected. In 1998, the CCCS organizations affiliated with the National Foundation for Consumer Credit (about two-thirds of the total number of CCCS organizations in the country) returned approximately \$1.9 billion to creditors."

Yeowch! Mr. Gardner's assessment of CCCS fits the picture that became clear while researching this book. Something that the good folks at CCCS and many other credit counseling services don't make clear to consumers is that they're paid by the creditors. That's right, the very people you owe money to are paying CCCS and other companies like them for the privilege of "helping" you through your debt-related challenges. Isn't that like the fox guarding the henhouse?

Competition Is Squeezing Profit Margins

While Mr. Gardner states that CCCS gets a 15% kickback on the accounts they're collecting, I contend that the explosion of competition in the debt/credit counseling world has led to fee-slashing and squeezed profit margins for everyone in the business.

One industry insider told me that the crowded field once dominated by CCCS is now having to deal with kickback fees as low as 5-7%. Combine lower revenues with the usual advertising and overhead costs, and some CCCS offices around the country have had to lay employees off in order to make their own ends meet. But business continues to be brisk thanks to the incredibly stupid and irresponsible lending policies of Internet-only credit card companies like Phoenix-based NextCard or San Francisco-based Providian, so I'm not too concerned about CCCS or any of their ilk going out of business anytime soon. But it's probably worth running you through the drill of "who gets what" so you'll have a better understanding of why the credit card companies would much rather see you sign up with their operatives in the debt/credit counseling world than the alternative—turning your overdue account over to a traditional, third-party debt-collection agency. Here's a CCCS-like example:

Suppose you owe Kramer's Department Store (among others) \$1,000; CCCS "assists" you by creating a repayment schedule with your creditors. You successfully repay the entire \$1,000 owed through CCCS, but in fact, only \$900 is returned to Kramer's Department Store.

An average commission equal to 10% (remember, these kickback margins have been squeezed downward from the 15% range over the last few years)—in this case \$100—is kept by CCCS for "helping" you through this period. So once again, I ask the age-old question: Whose interest is CCCS really representing? Yours, as the consumer/debtor, or the creditor's? Who's paying whom? And who do you think your creditors would rather do business with? A traditional, third-party debt-collection agency that will charge them as much as 50% of the total monies collected, or a CCCS-like company, whose kickbacks (commissions) they've been able to successfully squeeze these down to margins as low as 5-7fi%? You do the math.

A Deer in the Headlights

One of the funniest—and most telling—moments in the "how are you paid" world of disclosure from CCCS came when I was a guest on *The Oprah Winfrey Show* in the mid-1990s. As I was doing (verbal) battle with multiple debt collectors in the audience, all of a sudden, this one young lady stands up (she was a setup, of course) to tell America about an alternative to dealing with a debt collector. You guessed it! She began touting those angels known as CCCS.

But when I put her on the spot and asked her point blank: "How are you paid? How is CCCS paid for their services?", she truly looked like the proverbial deer in the headlights. "We receive a voluntary commission!" she responded. "Then if it's voluntary," I asked her, "why don't

you clearly disclose this to consumers?" (Insert frozen, deer-in-the-headlights response here.) *Next!*

The moral of the story? I'm not just picking on CCCS because they're an easy target. I'm focusing on them because they're the most recognized and oldest of all of the debt-counseling organizations. As far as I'm concerned, the newer players in the debt-counseling world need to be watched and questioned just as closely.

If It Sounds Too Good To Be True ... The Truth About Debt Re-Negotiation Companies

These guys are the worst. Companies that don't place themselves in the "debt counseling" category, but instead promise to "make deals" with your creditors to settle for a fraction of the outstanding balance. One notorious company in Southern California is in hot water for taking fees equal to 36% of the total balance owed by a consumer and keeping 69% (25% out of 36% collected, or 69% of the total fees received) for themselves—the rest (11% or 31% of the total amount paid) is used to settle with creditors. And of course we're reminded once again: "If it sounds too good to be true, it probably is." In this case, *it definitely is*.

Consumers paid millions of dollars to these thieves and received practically nothing. Many borrowed money from family members or 401Ks and, in good faith, expected to be able to settle their debt problems by hiring these rogues. They rarely ever succeeded; a former top lieutenant of the company I'm discussing (based in a Los Angeles suburb) admitted that the company collected

millions of dollars and settled less than 2-3% during his two-and-a-half-year association with them. The company is now being investigated by several state and federal agencies, and hundreds—perhaps thousands—of consumers are in worse financial shape than ever.

I don't care if they're licensed by the state and bonded by the most stable insurance company on the planet—if it sounds too good to be true, it almost always is. If you want to play a little hardball and renegotiate your credit card balances, the best track record of consistency I've seen over the last several years are attorneys that handle this side of the business as a sideline to their bankruptcy practice. But again, not all attorneys are created equal, and there are a few non-attorneys out there who I think do a pretty good job in this arena, too. You might want to check out the special section I've created on my website for any up-to-date developments in this area, as well as referrals to those experts I think do good work in the hardball world of renegotiations: www.bendover.com/hardball.asp.

SECURED VS. UNSECURED CREDITORS & LEVERAGE: USE IT OR LOSE IT

"A problem well stated is a problem half solved."

Charles F. Kettering

Leverage is what you make of it.

That simply means that as long as you have the upper hand in any negotiation, you'd better use it while you've got it—because I promise you, the other side always will.

In the majority of cases that involve consumer debtors vs. debt collectors, most of the debts owed are unsecured. Like credit card debts. Hospital and medical bills. Gym memberships, cable or cell phone bills or IRS bills and student loans.

Unlike the others in the unsecured category, student loans have risen in the hierarchy of debts to a new status, courtesy of Congress and the IRS. About the only way you'll ever get out of a student loan debt is by moving out of the country, usually a warm climate where Spanish is the primary language.

In other words: Don't bite off more than you can chew ... or in this case, don't take out a bunch of loans you won't be able to pay back. And if that little tidbit of insight is coming too late in the game for you, there's still hope. The bottom line? Plan on working towards re-establishing yourself as a fruitful, active citizen with a budget that includes the necessary dough to repay your student loan debt to society. Otherwise, you won't be seeing any tax refunds for the rest of your life. You'll also be able to look forward to future embarrassment once the Department of Education starts garnishing your paycheck. (Not to worry: I've got some good news and effective strategies that'll help you work out your student loan-related challenges in the next chapter.)

But credit cards and medical bills are in a different category altogether. They're almost never secured. As unsecured loans, they're the #1 source of headaches not just for consumers, but for the original creditors and their team of debt collectors. I don't really care how you got yourself into the mess you're in. My challenge is to help get you out of it. That's why you need to understand the difference between secured and unsecured creditors.

Credit Cards and Other Unsecured Creditors: There's a Reason Why They Charge More

Unsecured creditors are always the biggest losers when the economy starts to tank and consumers hit tough financial times. They're usually the last to get paid, if ever, because they don't have a "secured" position, meaning they have nothing more than your signature and promise of repayment as their security. Since credit card companies

are usually unsecured, they shoulder a higher level of risk in the course of their business than other lenders.

But this risk is built into their business plan and projections. They know they're going to lose a certain percentage of revenues due to bad debts, and in turn, they charge appreciably higher interest rates—which they've done over the years with no remorse. With annual percentage rates (APRs) as high as 25%, as well as over-limit fees and late charges (what am I telling you this for—if you're reading this book, you already know the drill) the credit card industry has a deep buffer built in to protect their bottom lines from the inevitable debtor defaults.

Remember: Interest rates have been at their lowest levels in forty years, making the bank's cost of funds (that they turn around and loan to you via credit cards) cheaper than ever. Of course, you won't see the credit card industry pass this savings along to the consumer. Nope. The previously referenced interest rates, late fees and over-limit charges continue to skyrocket and pad their bottom lines, even after the increasing number of defaults and eventual bankruptcies. Yes, the credit card and banking industries continue to churn and burn and generate billions of dollars in profits every year. A good illustration of this level of legal loan-sharking is provided through a letter that I answered in my newspaper column for *The Dallas Morning News* in September 2002:

Dear Ben: My husband and I were flabbergasted to receive the (attached) letter from Premier Bank. He'd responded to an offer he got in the mail for a Visa credit card, but after receiving (and scrutinizing) the first bill, canceled it immediately. Why? Just look at the

outrageous fees they were charging—just for issuing the card! Account set-up fee: \$29 ... Program fee: \$95 ... Annual fee: \$48 ... Participation fee: \$72. And if he wanted an additional card on the account, that's another \$20! Oh yeah, let's not forget the 23.9% interest rate, either. When he called their customer service number to cancel the card, their representative said she'd close the account but couldn't refund any fees ... but would give us a "\$120 credit to the account." This was followed up with a letter telling us that we'd get the \$120 only if we re-opened the account within the next 30 days! I don't want to pay, but can't find anyone "senior" to take my case to. What can we do?

— Marsha in Clearwater, FL

Dear Marsha: Next time, tell your husband to read the not-so-fine print. I've examined South Dakota-based Premier Bank's offer first-hand and in their defense, the \$244 in up-front fees you're complaining about were plainly stated in their offer, as well as on their website. It's highway robbery and borders on usury, in my opinion, but they've clearly disclosed what they're charging. I suspect they don't make contacting senior management easy for this reason, so I enlisted the assistance of the office of the South Dakota Comptroller of the Currency to track them down. I urge you to fire off a letter to the president of the bank to make your feelings known. Try following the guidelines offered in the special "Art of Successful Complaining" section on my website: www.bendover.com/complain.asp, in your quest for credit card-related justice. I hope you succeed—but you need to recognize that he owes the money. They can stick it to you and make it stick because he took the bait.

I suspect your husband's credit is (how do I say this tactfully?) less than stellar, and that's why he received this "offer" in the first place. Banks like Premier target poor credit risk consumers hungry for plastic at any cost. While I'm glad your husband scrutinized his first bill, tell him he needs to re-think his finance-related decision-making process. His current "Ready-Fire-Aim!" strategy may end up costing him \$244 ... for nothing.

Crocodile Tears?

I'm not telling you this to make you feel any better about not paying your bills. But let's face it: First USA, Citibank, Chase, MBNA, Discover and American Express and the rest of them—they all have this inherent risk when doing business. They all stand to make large profits or (if they're really stupid, like those dopes from NextCard in Phoenix) take large losses.

Fortunately for everyone, their losses have never threatened the future of their companies and are relatively small, less than 3-6% of their outstanding loans—unless they've engaged in really reckless lending policies (like Provident for years). But the truth of the matter is reflected in the power of the numbers, to the benefit of the banks and credit card companies:

- There are more than 1 billion credit cards in circulation—that's almost four for every man, woman and child in the United States.
- Americans charged over \$400 billion on their credit cards in the year 2001 alone.

- According to the Federal Reserve, there's over \$1.8 trillion in outstanding debt by mid-2002.
- And while the average household is carrying over \$8,500 in credit card debt, the credit card companies have really zeroed in on perhaps the most vulnerable debtors in the country: older consumers.

And in the summer of 2002, *Los Angeles Times* columnist Liz Pulliam Weston reported some sad statistics in one of her columns on MSN's Moneycentral.com website:

- Average household debt for those 65 and older rose 164% between 1992 and 2000, according to SRI Consulting Business Intelligence, to \$20,302. Among younger households, debt loads increased by 92%.
- Half of senior households now carry credit card balances, compared with fewer than one in five 10 years ago. The average balance has increased nearly 50%, to \$1,900.

So why should you care about all of these numbers? Because the first step in successfully negotiating with your creditors is understanding the degree of leverage you really have. And it's an especially critical concept for older consumers who come from a different generation and mindset when it comes to money issues. They're easy targets for aggressive collectors working for the original creditors themselves, and more vulnerable once the past due accounts are assigned to third-party collection agencies.

Bottom line? It's in the credit card company's best interest to work aggressively to keep these loans (in the form of credit card accounts) from going into total default—and the only way they're going to accomplish this is by working with debtors once they begin showing problem signs. Because otherwise, they're not going to get much—if anything—if the consumer-debtor ends up in bankruptcy court.

But they might not get much, anyway. Even if a consumer never files for bankruptcy, the big credit card companies know they're not going to see any of their money again if the debtor goes underground. What good's a judgment going to be if you can't collect on it? As a rule, most collection lawyers don't get paid for getting judgments, they get paid for recovering money for their client. Everyone's going to be better served if a deal is worked out. (More about this in Chapter 11: Creative Workouts.) Trust me when I tell you that in the vast majority of situations, you (the debtor-consumer) have the leverage when it comes to negotiating through an unsecured debt situation.

Secured Creditors: Don't Play Cat and Mouse

I know—you thought you could make those payments for that brand new sports car. You loved the smell of the new leather interior, and the stereo system was better than most people have in their homes. You couldn't wait to go for a drive ... anywhere. Even driving to work was fun.

But then reality set in. You got a couple of speeding tickets. Your insurance company jacked up your rates.

And then the cost of maintaining your car ended up being more than you expected, and now you can't afford to keep up the payments. Technically speaking? You're in deep doo-doo ... now what?

Aside from the fact that you shrewdly took a 20% (plus) hit on the value of the car the minute you drove it off the lot, the car dealer sure isn't interested in making any deals. He's already got his money, and the last thing he needs is another used car. Your lease company just informed you that you've got only 49 payments left on your 60-month lease, at \$633 a pop. Great. Only \$31,000 left on your lease on a car that's currently worth only \$21,000! Now what are you gonna do?

I'll tell you what not to do: Don't play cat and mouse. Don't hide the car in a friend's garage. Don't live in fear, looking through the blinds every time someone knocks on your door. Don't delay the inevitable. Do something on your terms. Do something **now**. *Get rid of the car.*

Set up an alternate transportation plan. If it means trading down and buying a used car that might not be pretty but runs decently, then do it. If it means working out a ride every day with a friend or neighbor, than start scheming now. If it means having to rely on public transportation, then get on with it.

But cover your butt so you can get to work, to the grocery store and to your kids. And even more importantly, end the madness before it gets out of control and consumes you. Call the dealer (if he's financing the car). Call the lease company (if you're leasing the car).

Call the finance company (if you're buying the car). And get it over with.

Get all of your possessions out of the car. Write down the mileage. Take some pictures of it, so you'll be able to document the condition of the car when you turned over possession—you never know if you'll need these later on. Call whomever has the lien on the car and tell them to come pick it up, but don't be surprised if they're not in a hurry to get it. I've seen cases where people drove their cars for another one to four months (without making a payment on it) before the lienholder finally came out to repossess it.

Make sure you get a signed receipt from whomever takes the car from you (whether it's the repo man or a representative for the actual lienholder) and be sure to note the day/date/time you turned over possession of the car.

Stranger Things Have Happened: You Might Have Money Coming Back to You!

If you've been properly insuring the vehicle, call your insurance agent as soon as you've turned the car over and request a refund of any unused premium that you may have paid on the car. (Why insure a car you no longer own?) Let's face it, any money you can recover will definitely come in handy if you're having financial problems of this magnitude. It could be 3 months of bus fare, gas money for whoever's giving you rides or even a down payment on a new set of wheels from the least-desirable but still viable option of last resort: A "tote-the-note" car lot. It's money you're owed, so go get it!

A voluntary repossession (which is what you did when you called the lienholder to come pick up your car because you couldn't pay for it anymore) isn't going to look any better on your credit report than a regular, run-of-the-mill repo. But you'll feel better and you'll know that's one less person you have to worry about coming after you. Gone are the days of going out to your parking space after work with that sick feeling in the pit of your stomach, the sick feeling of uncertainty ... wondering if your car's still there or if they've taken it away yet. Don't think you'll be able to hide it and keep using it forever. These repo guys are good. They'll almost always get the car. Don't test them. They'll always win, and you've got more important things to worry about.

You Can't Hide Your House

Like a car that you've financed, same goes for your house. It's also in the "secured asset" category. The lienholder (mortgage company, bank, savings and loan or whoever now owns the note on the property) is in a secured position. You fail to pay, they take their property back. The loan is secured by the property itself. However, in many cases you may actually have a little more leverage.

Sure, I know—you can't hide a house. They know where to find their property. Then they'll send you a certified letter, and if you try to duck that, they'll simply post a foreclosure notice on your door. The process is relatively simple; they'll take you down and get their property back. But there are alternative strategies and questions that must be addressed before you roll over that easy:

- Do you have equity in your house? There are many lenders that, while they can be expensive in terms of interest rate or fees and closing costs, can provide even the worst financial situations an alternative to foreclosure.
- Can you price the property right and sell it quick to flush out some cash? Maybe you're in the same position as millions of upside-down Americans before you who owned a property that's worth less now than when you bought it. (Ever owned a condominium in Texas?)

If you owe more than the property is worth, there's no easy way to dig out anytime soon. If you're behind on your payments, there's probably a slim chance of catching up in time to avoid foreclosure proceedings before they're started. And don't waste your time getting upset because your mortgage company "won't work with you" by refusing to accept partial payments. Most mortgage companies have been advised by their attorneys to reject any partial payments, for fear of being accused of modifying the original contract (and payment terms). Don't laugh: There's a legal precedent for enforcing this loophole, so almost every mortgage company avoids the potential problem by simply rejecting any partial payments, unless they're from a bankruptcy court-ordered workout plan.

Even though the inevitable foreclosure is on the horizon, the question is: "How far out there is it?" How long will it actually take for them to foreclose? I've seen mortgage companies move quickly—and I've seen them jack around and delay the foreclosure for months, as short

as three months and as long as nine or ten months. Nothing surprises me anymore.

I've also heard of properties being foreclosed, but the lawyers leaving the residents alone and failing to force them out until months later. Many times it just depends on how many properties they've got in their problem portfolio. The reasons are as varied as the dollar value of the house (too small) to the location of the property, especially if it's located in an area that's "less than desirable" and the lienholder knows they're not going to be able to sell it anytime soon.

Don't Be Afraid of Rejection!

It's time to deal, folks. Most everyone agrees that a house that's occupied is easier to sell than one that's empty—unless of course, the soon-to-be-evicted resident has trashed the place and the value's declining by the minute. If you're a reasonable soon-to-be-former homeowner who's about to lose your home to foreclosure, it's time to try to cut a deal with the lienholder or the attorneys representing them. They already know that you can't pay them anymore. Suggest they consider doing a "deed in lieu of foreclosure." This means that instead of the heartache of losing your house on the courthouse steps, you're willing to deed the property back over to them. Some lienholders' attorneys/legal departments may still require them to foreclose in order to keep the title clear, but the bottom line here is that you've got a deal for them.

Tell them that you can't afford the house payment—which included your taxes and insurance—but

that you can afford half. You're willing to stay there and maintain and even "show" the property to prospective buyers, but you'll be staying there now as a renter, not a homeowner. Maybe cut a deal that will pay you a commission if you bring a buyer to the table (but be prepared for them to take whatever that commission is to offset any monies you owe them on your defaulted mortgage). In any case, try to work out a deal. Remind them that a house that's lived in looks more like a home—and homes sell better than houses.

It'll be easier to stay put while you're looking for another place to live. It'll be easier than jerking the kids out of school, and the lienholder will be generating some rental income from the property instead of it just sitting there empty. Everybody can win in a potentially bad situation. And all you've got to do is ask. Give it a try—the worst thing they can say is no. If you don't have the guts to go face to face with the lienholder (or their representative), then use the phone. If you're still too scared to talk about it on the phone, then put it in a letter. But get after it and be aggressive. Stay on the offensive. Just because you've had some hard times financially doesn't make you any less of a good person. Bad things happen to good people. Just don't give up without trying. You'd be surprised how often something can be worked out in a bleak situation.

Trust me. I know. I've been in more than my share of them.

Now go give 'em hell!

STUDENT LOANS: THEY'LL GET YOU SOONER OR LATER

"I am not young enough to know everything."

James M. Barrie

Arrrrrgghhh! Remember when you signed on the dotted line for that cheap loan so you could go to college? You had a great time. You even fit 4 years of college into 6 years! Hey, it was cheap money, you learned enough to get your degree, and you made friends who will last a lifetime, right?

If you don't take repayment of your student loan seriously, paying for the opportunity to make those friends and have a 6-year party could last a lifetime.

Under the President Bush #1 Administration back in the early 1990s, the federal government received authorization to begin offsetting federal income tax refunds for defaulted student loans. You know they're serious when the government can garnish your paychecks in non-garnishment states like Texas and Florida. In 2001 alone, the Department of Education recovered \$2.5 billion through these methods. But student loans continue to be easier to get than ever. The banks just love to make 'em, and here's why:

- Student loans are the third-most profitable type of lending, beating out both car loans and mortgages.
- Most loans are "risk free" to the lenders, since the government guarantees repayment.
- Since the government guarantees repayment, few lenders put any effort into collecting them. If a borrower defaults, the government makes good on the loan, plus interest, and the lender avoids the expense of servicing the loan.

So here's the obvious question: Where's the incentive for lenders to screen properly to make the loan ... or to make any concerted efforts to collect it?

You Played. You Pay ... Unless They Lied!

If you played, you've got to pay. That's the bottom line for the majority of you. One familiar problem that's continued to surface over the years is a direct result of some of the "easy money" available that appears to encourage vocational school-related scams. These alternative secondary education outlets frequently promise qualified training and easy job placement after course completion. But in a number of cases these schools were complete frauds that never delivered on their promises, leaving students buried in debt with nothing more to show for their efforts than a stream of debt collection notices and a credit nightmare that won't go away.

But there's hope for all of you that think you got taken: If you can prove that you were deceived or defrauded by the institution or misled about what they

would deliver after you completed the course study, there might be a way out, but you've got to contact the Department of Education at once. Check out their website at www.ed.gov for current information on this side of the rehabilitation process.

S.O.L.? Maybe Not if You Read These FAQs

But the vast majority of loan balances are rightfully owed and yes, I know what it's like to be starting out burdened with payments on your student loans. Once again, I've been there and done that. I continue to see the same questions over the years, so in the spirit of problem-solving, here are answers to the Most Frequently Asked Questions Regarding Defaulted Student Loans:

Identity or Unauthorized Signature Disputes:

Situation #1: "Sorry, but even though it's my Social Security Number, that's not my name." The loan has your Social Security Number, but not your name, and you didn't sign a promissory note for this loan.

Solution: This can happen if the Social Security Number is mis-typed. Plan on sending a photocopy of one or more of the following to the agency that holds the loan:

- Social Security card
- Driver's license or government-issued ID card
- Passport or birth certificate

Situation #2: "This isn't my Social Security Number." The loan has your name, but not your Social Security Number, and you didn't sign a promissory note for this loan.

Solution: This can happen if the agency that holds the loan is trying to locate the borrower (who happens to have the same name as you). Contact the agency that holds the loan and describe your problem. You may be required to submit examples of your signature if your date of birth matches that of the borrower, or if you attended the school for which the loan was borrowed.

Situation #3: "I never signed a note." The loan has your name and Social Security Number, but you didn't sign a promissory note for this loan.

Solution: This can happen if somebody else uses your identity to borrow money. You may be required to submit photocopied examples of your signature from around the time that the loan was made (e.g., from tax returns for that year, driver's licenses issued at that time, canceled checks that you wrote at that time). The agency that holds the loan will compare the signature on the promissory note to the signature examples you provide.

You can also provide proof that you could not have attended the school for which the loan was made (e.g., proof that you were employed or enrolled elsewhere, were living in another location, etc.). If you are unable to provide such proof, but the signature is clearly not yours, you can provide an affidavit from an independent handwriting analyst.

The Big D's: Disability or Death

Situation #4: "I've become disabled since taking out the student loan; now I can't work and can't repay what I rightfully owe."

Solution, Part I: Student loans can be discharged (forgiven) if either the borrower or the student for whose education the loan was borrowed is **100% totally and permanently** disabled. This means a physician (either an M.D. or a D.O.) will certify that the individual is unable to work in any capacity and will never be able to work. It is important to note that:

- Even though you may be receiving Social Security, VA or other disability benefits, you may still not meet the definition of 100% total and permanent disability.
- You may not have suffered from the disabling medical condition at the time the loan was borrowed, but the condition has significantly deteriorated since then. In other words, if the individual was already totally and permanently disabled when the loan was made, it cannot be discharged for that reason.

Solution, Part II: If you believe you qualify for a disability discharge, you must complete, and your doctor must sign, a **Discharge Application Form**. You can request this form from the agency that holds your loan, or you can download it from the www.ed.gov website directly.

Make sure you send your paperwork to the right place. Check your most recent demand letter (or bill) for this loan, and if the payment address is the National Payment Center in Greenville, TX, then you need to submit your completed form to:

*U.S. Department of Education
P.O. Box 4222
Iowa City, IA 52244-4222*

You can also request a copy of this discharge application form by calling (800) 621-3115 or download a copy from the www.ed.gov website.

Also worth noting: In their quest to guard against fraud, expect the U.S. Department of Education to contact your doctor(s) directly to confirm the nature and severity of your disability if you apply for a disability discharge. While they're at it, the Department of Education will more than likely look for evidence that you're gainfully employed, so don't play games by trying to fake a disability to secure a discharge.

Situation #5: Death. The borrower of a student loan (or, in the case of a parent PLUS loan, the student for whose education the loan was borrowed) dies.

Solution: Yes, even the government has a heart and will forgive this debt. Here's what needs to happen:

Send an original or certified copy of the death certificate (must have the raised seal of the issuing records office) to the agency that currently holds the loan.

Check the most recent demand letter (or bill) for the loan in question, and if the payment address is the National

Payment Center in Greenville, TX, submit all documentation to:

*U.S. Department of Education
P.O. Box 4222
Iowa City, IA 52244-4222*

Two things you need to do to make sure this doesn't blow up in your face:

- Make sure you've got a copy of the complete set of documents you're sending them, and
- Mail everything via Certified Mail/Return Receipt Requested, with a cover letter explaining the circumstances and requesting a full and immediate discharge (forgiveness) of the loan balance.

Situation #6: Closed School. You didn't complete the program of study and either the school closed while you were attending, or the school closed within ninety days after you withdrew from the school.

Solution: Complete and submit a **Closed School Discharge Application Form**. Get a copy of this form from the agency that currently holds your loan, or download it from the Department of Education website at: www.ed.gov.

Also be sure to check your most recent demand letter (or bill) for this loan and if the payment address is the National Payment Center in Greenville, TX, then submit your completed form to:

*U.S. Department of Education
P.O. Box 4222
Iowa City, IA 52244-4222*

You can also obtain a copy of this discharge application form by calling (800) 621-3115.

Situation #7: "I never borrowed the entire loan amount." If you didn't complete the program, course of study or semester for which you borrowed the loan, you may be eligible to have the loan discharged (forgiven), or to have the amount you owe on the loan reduced. Loans aren't always forgiven entirely in this circumstance, because the school had to reserve a place for you and couldn't have offered that spot to another student after the semester already began. Whether and how much your loan will be reduced will depend on how long you attended and the policies of the school and/or the state in which that school operated.

Solution: Complete and submit an **Unpaid Tuition Refund Discharge Application Form**. Get a copy of this form from the agency that holds your loan, or you can download it now from their website. Check a recent demand letter or bill for this loan; if the address to which you are requested to send payment is the National Payment Center in Greenville, TX, you should submit your completed form to:

*U.S. Department of Education
P.O. Box 4222
Iowa City, IA 52244-4222*

You can also get a copy of this application by calling (800) 621-3115.

Situation #8: False Certification of Ability to Benefit. If you didn't have a high school diploma or GED at the time you borrowed the loan, you may qualify to have it discharged (forgiven)—but not necessarily. Not all courses of study require a high school diploma or GED (e.g., cosmetology or truck driving), and the school may have given you a test to see whether you were able to benefit from the education.

Solution: You'll need to complete and submit a **False Certification of Ability to Benefit Discharge Application Form**. Get a copy of this form from the agency that currently holds your loan, or download it from the www.ed.gov website. Check your most recent demand letter (or bill) for this loan; if the payment address is the National Payment Center in Greenville, TX, then send your completed form to:

*U.S. Department of Education
P.O. Box 4222
Iowa City, IA 52244-4222*

You can also get a copy of this discharge application form by calling (800) 621-3115.

Situation #9: False Certification of Ability to Benefit Due to Disqualifying Condition. If you're unable to benefit from the education you've received, you might be eligible to have it discharged (forgiven), depending on your circumstances—but before you start celebrating, you'd

better read the rest of this section and understand the very specific conditions.

Your loan can't be discharged just because:

- You're dissatisfied with the quality of the education you received, or
- You failed to find employment in the field for which you received the education.

It's your responsibility to research the quality of the school before you enroll. Just because the government guarantees or issues the loan doesn't mean the government guarantees the quality of the education offered. (If that were the case, they'd never guarantee another loan.)

However, if you were unable to benefit from the education because of some disqualifying condition, you might be eligible for discharge if the school wrongfully ignored this condition. Examples of this include (but are not limited to):

- You attended a truck-driving school but didn't have a driver's license (d'oh!), or
- You couldn't obtain a driver's license because you're legally blind.

If either of these apply, you may qualify for a discharge.

Solution: Complete and submit a **False Certification of Ability to Benefit Due to Disqualifying Condition Discharge Application Form**. You can get a copy of this form from the agency that currently holds your loan, or download it from the www.ed.gov website.

Check your most recent demand letter (or bill) for this loan and if the payment address is the National Payment Center in Greenville, TX, then mail your completed form to:

***U.S. Department of Education
P.O. Box 4222
Iowa City, IA 52244-4222***

You can also get a copy of this discharge application form by calling (800) 621-3115.

Situation #10: "Isn't there a Statute of Limitations on the collectability of a loan?"

Solution: Nice try, but ... no. There's no statute of limitations for collecting federal student loans, as outlined in the Higher Education Act of 1965 and amended by the Higher Education Technical Amendments of 1991 and 1992.

Situation #11: "Can't I discharge my student loans in bankruptcy?"

Solution: Probably not, since federal student loans are not automatically dischargeable in bankruptcy. Whether your loan's dischargeable depends largely on when you filed for bankruptcy, and how old your loan was at the time you filed. If your bankruptcy petition was dismissed rather than discharged, then your loan would not be dischargeable. If you filed for bankruptcy:

1. Between 8/14/1979 and 5/27/1991: Your loan was only dischargeable if you had been required

to make payments on the loan for at least five years prior to the date you filed.

2. Between 5/28/1991 and 10/7/1998: Your loan was only dischargeable if you had been required to make payments on the loan for at least seven years prior to the date you filed.
3. On or after 10/8/1998: Your loan is probably not dischargeable unless the bankruptcy court specifically determined that requiring you to repay the loan would constitute an undue hardship for you or your dependents.

There are always exceptions to the rules, so let your bankruptcy attorney earn their fee and figure it out. If you think you might be able to slide into the dischargeable category, you'll need to submit the following proof of your bankruptcy to the agency that currently holds your loan:

- Copy of the notice of the first meeting of creditors
- List of creditors (Schedule A-3)
- Final discharge

Be sure to include a cover letter stating your name, your Social Security Number and the account number(s) of the loan(s) you believe should be discharged (in many cases your Social Security Number is your account number). Also, be sure to check the most recent demand letter (or bill) for this loan and if the payment address is the National Payment Center in Greenville, TX, then send your documentation to:

*U.S. Department of Education
P.O. Box 1920
St. Paul, MN 55101*

Situation #12: "I'm not paying because the balance they claim I owe them is wrong" A federal student loan, like most loans, accrues interest over time. In addition, the balance on defaulted student loans may be higher because:

- Of the addition of collection costs and fees that you agreed to pay when you signed the original promissory note.
- The resulting balance you currently owe may be much larger than the amount you originally borrowed if the amount you've paid (so far) is less than the amount of interest and/or fees that have been added.
- You also need to remember that you may have taken out multiple loans that were serviced by different agencies after you graduated. As a result, the payments you may have made could have been applied to a different loan than the one you're currently disputing. In other words, it's a mess, and this is one more reason why you'd better keep good records and make sure you also note the specific loan account number on every check or every payment made.

Solution: If you have proof that your loan was paid in full, discharged or otherwise satisfied, you need to send a copy (never originals!) of your proof to the agency that currently holds your loan.

If you believe that one or more of the payments you've made toward your loan(s) hasn't been properly credited, you'll need to send proof to the agency that currently holds the loan(s). The kind of proof you need to submit depends on how the payment was made:

- If you sent your payment via personal check, then you'll need to submit a copy of the front and back of the canceled check.
- If you sent your payment via cashier's check, money order or Western Union Quick Collect payment, then get ready to track down a copy of the front and back of the canceled payment instrument. Here comes the fun part: You'll have to obtain this from the bank or agency that issued the check or money order, since a copy of your receipt isn't sufficient.
- If your payment was a Federal Treasury Offset Payment (the official term for their scarfing up your tax refund that you thought you were going to get), you'll need to provide a copy of the notice from the U.S. Treasury's Financial Management Service (FMS) or from the IRS, notifying you that your federal payment was offset. Don't have a copy of this notice? Get one by calling FMS: (888) 304-3107.
- If you sent your payment via credit card, then you need to send in a copy of your credit card billing statement that shows the transaction in question.

Always be sure to include a cover letter with all proof (copies only!) you submit, and make sure your cover letter clearly states your name and Social Security Number—and

send it via Certified Mail/Return Receipt Requested. Check your most recent demand letter (or bill) for this loan and if the payment address listed is the National Payment Center in Greenville, TX, then mail your documentation to:

*U.S. Department of Education
P.O. Box 4222
Iowa City, IA 52244-4222*

Situation #13: "I've moved a few times, but it's not my fault that they couldn't find me!"

Solution: Wanna bet? Listen, Einstein, when you signed for your student loan it became your responsibility to let your lender know whenever your address changed. If you failed to do so, the lender or other agencies that have held your loan may not have been able to reach you, but you're still responsible for repaying the loan, along with all of the "juice," the accrued interest and any collection costs or fees that might've been added. As discussed earlier in this book, some debts may not be enforceable if the lender fails to attempt to collect them for a period of time, and debtors may invoke a legal principle called the "defense of laches." But you're out of luck trying it this time: This defense may not be used against federal student loans.

Situation #14: "If they start garnishing my wages, I'm in deep doo-doo and won't be able to make ends meet! What do I do?" When a federal student loan goes into default it becomes due and payable in full immediately. But before they can start garnishing your wages, the agency that currently holds your loan is required to send you a letter giving you at least 30 days'

notice and allowing you to avoid garnishment by either entering a repayment plan or by proving that you don't owe the loan. If you failed to do either of these things within the 30-day time period, then your wages become eligible for offset for as long as you owe the defaulted loan. Unless ...

Solution: You get off your butt and contact the agency that currently holds your loan to discuss your circumstances and possibly negotiate to have the garnishment amount reduced. Expect them to ask for a complete **Statement of Financial Status**; if you want to get a look at what they're going to be asking for in advance, you can download it from the www.ed.gov website. And keep in mind that they've heard it all, so take the same attitude you would if you got pulled over by a cop for speeding: Tell the truth, take your lumps and try to minimize the (financial) pain.

Situation #15: "I'm really going to suffer financial hardship because they're asking me to commit to an unreasonable payment plan! What can I do?"

Solution: When your federal student loan went into default, you allowed them to "accelerate" the loan, meaning that at that point it became due and payable in full immediately. The agency that currently holds the loan you owe has the legal right to demand that you repay the balance immediately or as quickly as possible—and believe it or not, they can even legally demand that you attempt to borrow the funds necessary or sell some of your assets in order to pay them in full. However, if you show them that you're unable to meet their demands, especially in the form of a completed Statement of Financial Status (described

above) they will work with you towards an amicable repayment schedule.

Keep in mind that any payments you make voluntarily while you're negotiating a restructured payment schedule will not only reduce the amount you owe, it will demonstrate that you're acting in good faith. But you also need to keep in mind that there are no guarantees that these good-faith payments will actually result in a restructured/revised payment schedule. According to the Department of Education website: "All guaranty agencies and the U.S. Department of Education will accept regular monthly payments that are both reasonable to the agency and affordable to you. Call us at (800) 621-3115 and one of our customer service representatives will assist you with determining a repayment amount that is right for you."

Situation #16: "I'm applying for a HUD (FHA) or VA loan and I don't qualify because of my defaulted student loan. What can I do?"

Solution: Your options for reinstating your eligibility to receive a HUD (FHA) or VA loan are:

1. Repay or satisfy the loan in full.
2. Consolidate your loan through the FFEL Loan Consolidation Program: It's a consolidation loan designed to help students (or parent borrowers) consolidate several types of federal student loans with various repayment schedules into one loan. Find more information about the FFEL program online at: <http://studentaid.ed.gov> or apply on-line at: <http://loanconsolidation.ed.gov>.

3. Consolidate your loan through the William D. Ford Direct Loan Program: Also known as a Direct Loan program, borrowers complete one application, the Free Application for Federal Student Aid (FAFSA, available online at www.fafsa.ed.gov), for all Direct Loans. You can also apply online at: <http://loanconsolidation.ed.gov>.
4. "Rehabilitate" your loan through the Department of Education's "loan rehabilitation" program. Since defaulted student loans have no statute of limitations for enforceability, you would remain ineligible to receive a HUD or VA loan until you complete one of these options.

Situation #17: "I want to get frequent flier miles; can I pay my balance owed or monthly payments using a credit card?"

Solution: You're as good as the credit limit you've got remaining—absolutely! They'll take all of the usual cards; call them to set it up at: (800) 621-3115.

Situation #18: "I want to start repaying my loans, but I don't have any idea where to start sending my payments. What do I do?"

Solution: If you have a defaulted student loan held by the Department of Education, you can mail a check or money order to this address:

*National Payment Center
P.O. Box 4169
Greenville, TX 75403-4169*

However, if you're not sure about the status of your loan or you need to find out who's currently holding your loan, call them at (800) 621-3115 before sending in any payments. You can also use the Department of Education's online Loan Locator to find out which lenders currently hold your loan(s): www.studentclearinghouse.org.

Maybe I'm Just Dreaming, but Wouldn't It Be Nice If ...

Okay, so lawmakers seem to have finally made some realistic advances with the student loan reforms shaped in the 1990s. But I'd still like to see some improvements to the country's student loan system, such as:

- Require every student coming out of high school to pass a basic consumer literacy test. I'm not trying to make Harvard MBAs out of high school graduates, but I know that today's graduates (either high school or college) are woefully un-prepared for the simplest form of finance: balancing a checkbook. Keep it simple, but make sure students understand what debt obligations really are and how they will affect their financial stability over the long haul.
- Require every student borrower to watch a 15 minute video presentation that explains in simple, common-sense terms the document they are about to sign and their obligation to repay all monies borrowed. Make sure they understand that this is a debt they're going to have to pay sooner or later. Also, unlike their parents have done for generations, don't allow borrowers to

rush through the fine print. They've got to understand what they're signing.

- Expand programs that allow student loan borrowers who graduate to work off their obligations. Many states have similar programs in operation, allowing borrowers to work off their debt if they become teachers, for example. In short, certain job arenas excuse student debt. It's a good idea and a viable solution to the ongoing heartburn created by defaulted loans.
- Quit reimbursing lenders 100% for defaulted student loans. How about 50% instead? If the lenders know they'll have to eat half the loans they make that go bad, I guarantee you they won't be making as many flaky loans as they've been getting away with in the past. Accountability increases responsibility.
- Finally, allow student loan interest to be deductible, just like on a home mortgage. Getting an undergrad degree and especially a post-secondary education is more expensive than ever, especially if an MBA, a law degree or the granddaddy of them all, a medical degree, is the goal. Balances exceeding \$150,000 aren't that unusual anymore, so let's give tomorrow's brain trust a fighting (financial) chance.

I'm not trying to make financing an education impossible. But I am tired of seeing incredibly naive adults set themselves up for potentially decades of financial heartburn that can be avoided.

UNDERSTANDING THE FAIR DEBT COLLECTION PRACTICES ACT

*"If you don't know where you are going,
every road will get you nowhere."*

Henry Kissinger

Don't ever accuse me of exaggerating the truth when it comes to describing the mindset of the debt collector. What you're about to read is an actual excerpt from a story reported by the Associated Press in September 2002:

First came several dozen annoying phone calls. The next day, the anonymous debt collector became more persistent, phoning Albert Ho's law firm more than 300 times to scream obscenities, play pornographic tapes or just stay silently on the line. On the third day, the number of calls shot up to 687. "It was extremely disturbing," said Ho. "It jammed the normal calls, keeping my clients waiting and affecting my business." But Ho wasn't even the target.

The husband of an employee had gone bankrupt, leaving his office at the mercy of unscrupulous debt collectors who have gone on a rampage as the economy worsens and bad loans multiply. Collectors have been known to throw snakes or a swarm of grasshoppers into an apartment to hasten debt repayment, or to hang the

carcasses of dogs and cats outside. A senior medical officer at the Castle Peak Hospital recalled a woman who tried to kill herself after a debt collector moved into the family home, demanding food every day until she paid her gambling debts. "She couldn't stand it," he said. The woman was rescued, then referred to him for treatment of clinical depression."

Thank God this didn't happen in the United States. But it is happening with unsettling regularity in Hong Kong, circa 2002. We're fortunate to be living in a society where this type of unscrupulous activity is illegal. But it makes you wonder, doesn't it? It really must've been bad back in the 1970s.

The American debt collection industry must've really been vicious—even more heartless than they are today—to get lawmakers off their butts and enact laws that (for once) related to everyone, especially those suffering through difficult financial times.

The Fair Debt Collection Practices Act (more commonly referred to as the FDCPA) became Public Law 95-108 on September 20, 1977, and was updated/amended twice since, by Public Law 99-361 on July 9, 1986, and by Public Law 104-208 on September 30, 1996. Without question, this is probably the most powerful yet least understood or utilized consumer protection law ever—at least until 1992, when I started educating consumers about their rights in dealing with the debt collection industry.

Like any piece of legislation that becomes federal law, it's complicated, but it's not brain surgery. (That's why I was able to write this book!) I wrote *Back Off!* to help

people understand what this law is all about and how to use it and benefit from the protection it provides for all of us. Once you learn what it all means, you'll be well on your way to getting back on your feet. A little bruised and emotionally scarred perhaps, but you'll survive.

I'm going to break down the most important sections of the law (there's a full reprint of the entire law in Appendix F) and explain clearly what it all means to you and me.

PLEASE NOTE: There are so many points to the FDCPA that I'll clarify/restate them in smaller groups so it's easier for you to digest and, hopefully, understand.

§804. Acquisition of Location Information: Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

1. *Identify himself to state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;*
2. *Not state that the consumer owes any debt;*
3. *Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;*
4. *Not communicate by postcard;*
5. *Not use any language or symbol on the envelope or in the contents of any communication effected*

by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication is related to the collection of a debt; and

6. *After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.*

Translated Into Plain English:

When the debt collector is trying to find you, they can't:

1. Tell everyone that they're debt collectors out looking for you;
2. Tell anyone that you owe money;
3. Contact your family, friends, neighbors, etc. more than once while trying to find you, unless they think that person has intentionally given bad information out about you;
4. Use a postcard (Think about it—wouldn't they just love to use this nifty little intimidation device if they were allowed to?);
5. Send you a letter with the return address showing it's from a collection agency; and
6. Keep calling people to "look" for you after they know that you're being represented by an attorney. This portion of the law is also intended to restrain the debt collectors from

intimidating you by making repeated contacts with your family, friends, neighbors, etc. Be aware that they frequently violate this rule and use this bullying tactic, so be sure to keep track (that's right—keep a log) of all contacts the debt collector makes to others (when possible, without causing self-inflicted embarrassment).

§805. Communication In Connection With Debt Collection:

Communication with the consumer generally— Without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

1. *At any usual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m. local time at the consumer's location;*
2. *If the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector or unless the attorney*

consents to direct communication with the consumer;

3. *At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.*

Translated Into Plain English:

1. No middle-of-the-night wake-up calls from the debt collectors. They're authorized to call you between 8 a.m. and 9 p.m. your local time, not theirs. Don't let these bottom-feeders get away with any of their "Oh, I forgot you're in another time zone"excuses, either. They know better.
2. If the debt collector knows you've got an attorney handling your situation, under federal law, they've got to contact the attorney. They can't keep calling you.
3. The debt collector can call you at work, unless the debt collector already knows that you can't take calls at work. A good example of this area of abuse? Previous calls handled by a supervisor, informing the debt collector you're not allowed to receive these types of calls at work. But take the uncertainty out of the equation: Tell the debt collector clearly: "I cannot take calls from you here at work. Don't ever call me here again!" and then hang up. Theoretically you've now put them on notice-but to insure they get the message clearly and without question, the cleanest way to eliminate

them? Fire off the Cease & Desist Letter located in Appendix B.

Communication with third parties—

Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

Translated Into Plain English:

The debt collector can't discuss your debt with anyone else except for you, your attorney (if you're using one) or a credit reporting agency. They cannot call your boss, your family or your neighbors—if they do, they've broken the law. Remember: One of their favorite tools of intimidation is their assumption that you don't know your rights under federal law. When they contact your boss, family members or neighbors trying to "locate you," what they're really betting on is your ignorance of the law and fear of being "found out." If these clowns actually do cross the line and reveal their purpose for trying to reach you, don't be afraid to go after them.

Ceasing-communication—

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer

wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

1. *To advise the consumer that the debt collector's further efforts are being terminated;*
2. *To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or,*
3. *Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy. If such notice from the consumer is made by mail, notification shall be complete upon receipt.*

Translated Into Plain English:

I keep referring throughout this book to the Cease & Desist Letter as being the key to regaining control of your situation. It's your "silver bullet," and it's the key to taking the debt collector out of your life. This section of the law describes that very letter.

Once you've sent the Cease & Desist Letter, the debt collector:

1. Can contact you only one more time to advise you that they won't be contacting you (about this particular debt, anyway) anymore.

2. Can tell you that either they plan to—or advise their client (the original creditor) to—sue you. It's their right—to sue you, that is. But what they're really hoping to accomplish is to scare you (with the threat of a lawsuit) into paying them. Sorry, pal—it's not gonna happen. Don't pay them. Only the original creditor's ever gonna see any cash. Adios, bottom-feeder!
3. Finally, and most important: If you notify the debt collector by mail that you will not deal with them, notification is deemed completed and they're history.

While many states (if not all) now accept the transmission of a faxed letter (as long as you have the proper acknowledgment/receipt generated by the sending fax machine showing proof of transmission, as well as time and date sent), I still prefer the old-fashioned route via the U.S. Mail. Yes, I know it's more expensive. And yes, I know that it takes longer. But it's also the best way to paper your trail, especially if you have to go on the offensive against the debt collection agency or even the original creditor somewhere down the road.

So with that said, remember to send this letter by Certified Mail/Return Receipt Requested, ensuring the hard copy proof necessary that they received your letter. You don't want to hear any claims that they never received your letter, do you?

§806. Harassment or abuse: A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general

application of the foregoing, the following conduct is a violation of this section:

1. *The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person;*
2. *The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;*
3. *The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency;*
4. *The advertisement for sale of any debt to coerce payment of the debt;*
5. *Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;*
6. *Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.*

Translated Into Plain English:

1. Remember: The debt collector can't threaten to hurt you physically or to destroy your reputation or any property you may own. Amazingly, this is one of the most violated sections of the law—don't let them do it to you! They love to make idle threats, but recognize them for what they are: idle threats.
2. Some debt collector's language could make a sailor blush; they'll verbally attack you with every obscenity in the book if they think it'll

- scare you into paying them. But now you know better. It's illegal. (You'll probably want to buy a telephone recording device-type unit at your local Radio Shack, discussed in greater detail in Chapter 4. This can provide hours of fun!)
3. They can't put your name on a list of "deadbeats" and publish it in the paper or post it in public. All they can do is discreetly report you to the credit reporting bureaus.
 4. They can't threaten to advertise your debt for sale in order to force you to repay them. It's rare that this ever occurs anymore, but it can happen.
 5. Without question, this has to be the most frequently violated part of the law: They cannot keep calling you on the phone. They can't call and hang up, or let the phone ring and hang up right before you get to it. It's a favorite technique but one that can really hang them if you catch them. And with the evolved telephone technology of the day, from Caller ID to Call Trap, not only can you catch them, but you can go after them for damages and make it stick.
 6. They can't make anonymous phone calls. One of the favorite mind game tactics used by female debt collectors to "stir things up around the house" goes like this: A female collector calls and ask for the debtor, in this example named "Bob." Bob's wife answers and predictably starts quizzing the debt collector. The collector makes comments that'll trigger a fight between poor Bob and his now suspicious wife. Remember, if you ever ask a collector point blank who they are and what they want, they

must tell you. They can't lie or misrepresent their identity, though they'll try. That's why the next part of the law exists; our lawmakers saw this one coming back in the '70s. Read on ...

§807. False or misleading representations: A debt collector may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

1. *The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform or facsimile thereof.*
2. *The false representation of—*
 - (a) *the character, amount, or legal status of any debt; or*
 - (b) *any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.*
3. *The false representation or implication that any individual is an attorney or that any communication is from an attorney.*
4. *The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.*

5. *The threat to take any action that cannot legally be taken or that is not intended to be taken.*

Translated Into Plain English:

1. The debt collector cannot try to give you the false impression that they're affiliated or connected in any way with the government (federal or state) by either stating this in a letter or on the phone or insinuating it. Another favorite tactic, especially between February and May of each year, goes like this: Debt collector calls and says something to the effect of, "According to our records (or friends working) at the IRS, we see that you're due a sizable tax refund! You'd better send it to me, or else." This is obviously a numbers game—they know that millions of Americans receive tax refunds every spring—but it's just another blatant attempt to intimidate the naive and gullible consumer into thinking they're somehow "connected" with the IRS. This is pure bull****.
2. Frequently, debt collectors may tell you the balance owed on a debt is much higher than it really is, hoping to scare you into agreeing to pay the smaller (actual) amount owed. They may also tell you that the debt has "already gone to trial" and you'd better pay up or the judge may add additional fees. The collector may try to convince you that they can add (or have already added) enormous fees that they will collect for their services in collecting the debt. More bull.

3. Another favorite? The pitiful little debt collector calling to tell you that they're from the "Legal Department" (or even sillier) "Pre-Legal Department." Or the collector introduces him/herself as a "paralegal." While the voice on the phone may be very convincing and use a variety of terms to try to make you believe that you're dealing with someone who's an attorney, actually ... (insert gasp here) they aren't! Many collection letters may attempt to use letterhead that looks very "official"—to appear as if it's coming from an attorney's office. U.S. government logo knockoffs, eagles and other official-looking seals are favorites of these punks who think they're going to scare you into paying up. You don't have to take my word for it: The Federal Trade Commission's website is loaded with settlement announcements against some of the biggest and most notorious debt collection agencies in the country. Check it out for yourself on their website: www.ftc.gov.
4. Still another favorite, and one that almost did me in back in 1986: "Sir, you've got until 5 p.m. today to get full payment into our offices or we'll have the sheriff pick you up." Threats to seize your personal property when they can't are just as common. Here's another threat they like to use: If they notify the courts that you're an irresponsible deadbeat, the courts may take your children to a foster home since you're probably an unfit parent as well! Trust me—these low-lives will say whatever works in order to scare you into paying them. Furthermore, in some states (like Texas),

creditors can't garnish your paycheck for civil matters. (All bets are off if you've got defaulted student loans, back child support or IRS problems.) If a debt collector calling from another state threatens you with an action that's not legal in your state, it's just another way they routinely violate this portion of the law.

5. As I just mentioned, it's illegal for a debt collector to threaten an action that's not enforceable in your state. Furthermore, if the debt collector is threatening you with actions it could take but has never actually taken, this too is against the law. If they threaten to do something, they'd better damned well be ready to prove that they've done it before.
6. *The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—*
 - a) *lose any claim or defense to payment of the debt; or*
 - b) *become subject to any practice prohibited by this title.*
7. *The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.*
8. *Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.*
9. *The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official, or agency of*

the United States or any State, or which creates a false impression as to its source, authorization, approval.

10. *The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.*

Translated Into Plain English:

6. Another favorite tactic used to put the heat on consumers. It's illegal for the debt collector to coerce you into repaying a debt to them with the threat of losing any defensive position regarding this debt. It's also illegal to threaten to do something that's not allowed by law in your state (such as the previously mentioned threat of garnishing your paycheck when it's not allowed, as in Texas).
7. Ever heard this line from a debt collector? "It's pretty apparent to us that you used this card knowing that you couldn't repay the debt. That's fraud. You've committed a crime and can go to jail for that!" Nice folks, huh? I almost blew my brains out when they used that one on me in 1986. Not only is it illegal for debt collectors to say, but it's still one of the most frequently used intimidation tactics.
8. You always have the right to dispute any debt that's not correct. It may not be correct for a variety of reasons: Goods or services never received, incorrect amount being charged, fraud (especially with the rising popularity and

exposure created by the Internet), etc. Whatever the case, if you've notified the debt collector (verbally, but always best by letter) that the *debt's in dispute*, it is *illegal* for them to report this to anyone unless they acknowledge that the debt is in dispute. And this, ladies and gentlemen, is another terrific counter-attacking strategy card to play against the original creditor, because in the majority of cases, the debt collectors ignore and fail to investigate any disputed debt assertions made by consumer-debtors—setting the original creditor and their hired-gun collection agency up for failure if you're smart enough to jam them with this one. Furthermore, it's illegal for the debt collector to report **anything** that's false, and by God, they'd better be able to document anything they report to any credit bureau, or they've broken another federal law.

9. A great scare tactic they like to use on unsuspecting consumers—some of their documents either look like a court summons or something issued by the IRS. They'll try just about anything to get an edge, so scrutinize anything that looks "official" before getting too scared. Remember: These punks are pros at the art of intimidation.
10. This is another frequently violated part of the law, and the most difficult to prove. Debt collectors will use a variety of stories to find a consumer, such as: "I'm an old friend ..." or "I'm his brother/sister ..." or "I used to work with him over at ..." or even more creative ones, like "I'm his insurance agent and we finally got his claim

check in the amount of \$551.50 in today's mail! Could you have him call me at ...?" They're breaking the law whenever they lie to get information about you.

11. *The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.*
12. *The false representation or implication that accounts have been turned over to innocent purchasers for value.*
13. *The false representation or implication that documents are legal process.*
14. *The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.*
15. *The false representation or implication that documents are not legal process forms or do not require action by the consumer.*
16. *The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.*

Translated Into Plain English:

11. This is widely referred to as the industry's "Mini Miranda" warning, and it amended the current law in September 1996. It's a statement that's now required to be included as a standard part of any collection letter, and normally found at the bottom of the letter. If they contact you initially by phone they must also make you aware that they're trying to collect a debt, and any information obtained will be used for that purpose only.
12. Another ploy to intimidate you to pay the intimidator on the other end of the phone: The claim that your account was sold to an innocent party that paid in good faith for your debt. Even if they did, it's not your problem. Don't believe it.
13. Similar to #9, this technique is a favorite scare tactic. Pray that they try this one on you. It's so easy to nail them if they try this charade, since you'll have undisputable proof that they violated the law ... again.
14. Another favorite tactic that slams home a repeated theme: Debt collectors love to intimidate. They'll use company names that sound impressive and very "legal"—or threatening. Smaller (local or regional) debt collection agencies are especially fond of this one. Don't fall for it.
15. Not a common tactic, but it still pops up on occasion. The strategy here is extremely sneaky—they lull the consumer into thinking they don't have to reply. The consumer fails to

respond in time to an actual court action, and the debt collector (or their attorney) gets a judgment and the ability to levy on your assets if you're not careful. Again, this type of deception is easy to prove but could be costly to pursue since you'd need to hire an attorney to fight your battle in court, and money's obviously a scarce commodity already. But if you ever get popped by a collection agency using this tactic, contact me through my website at once. There are several very successful law firms around the country that have slapped some of the biggest collection agencies and their clients—your original creditor—with multi-million-dollar judgments.

16. Example: A debt collector calls you and says they're trying to collect, adding: "Oh yeah, by the way, if you don't pay this bill to me and me only, I'm afraid I'll have to put this on your credit report through our affiliate company, TransUnion." If the debt collection agency is not owned and therefore not a part of a consumer reporting agency (credit bureau), then they've violated the law. But be warned: Equifax has really increased their presence in this part of the business and has expanded their collection operations almost exponentially over the last decade. They're also in the collection business and now really are a part of the credit bureau (credit reporting) system. This last point needs to hammer home a familiar message: You have got to know who you're dealing with. *Always.*

§808. Unfair practices: *A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:*

1. *The collection of any amount (including any interest, fee, charges, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.*
2. *The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.*
3. *The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.*
4. *Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.*

Translated Into Plain English:

1. You've got to admire them for trying: They love to increase their profitability by adding on "special" collection fees from time to time if they can get away with it. Sometimes they may add enormous fees to your actual debt and then

"settle" for a lesser amount. Bottom line? Unless the original loan agreement you signed with the original creditor specifies certain monetary penalties for late payment or default, or these are allowed by state law (they're almost always not), then too bad for the debt collector. They can't add on arbitrary fees. It's illegal.

2. A favorite of the debt collection community is getting consumers to send post-dated checks. "Hey, you want me to stop the process servers from coming out to your job? I can cancel the lawsuit if you send me twelve postdated checks for \$100 each!" Wrong. Debt collectors must notify you prior to depositing a postdated check (they rarely do). Another favorite ploy? Depositing checks early, causing them to bounce—which, in turn, costs the consumer Non-Sufficient Funds (overdraft) fees. It's a nightmare that can be easily avoided: Never send a postdated check to anyone, especially a debt collector. Better yet (in case you haven't figured it out by now), never deal with a debt collector, period. (And for God's sake: Don't you dare give them your bank account/check showing account information, either! That's just as bad—actually, worse—than giving them the physical post-dated checks. *¿Comprendé?*)
3. Another twist on the previous portion of the law just discussed deals with that recurring theme of intimidation. Debt collectors know when a consumer's sending them postdated checks "just to get them off my back." They know that in these cases the chances are usually pretty high that the consumer will end up bouncing a

postdated check—which is exactly what they want. Then the consumer's vulnerable to a higher and even more intimidating level of threats spewed like venom through the phone: "All I've gotta do now is turn these checks over to the District Attorney's office and you won't have to worry about any more calls from me—because you'll be in jail!" The debt collector knows the fear everybody has of going to jail, and they're quick to capitalize on it. This tactic is illegal, but it should never happen in the first place. You'll never send a post-dated check, because you'll never deal with a debt collector, right?

4. Another example of holding the consumer's feet to the fire by threatening to deposit those post-dated checks early. This too, is against the law.
 1. *Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.*
 2. *Taking or threatening to take any non-judicial action to effect dispossession of property if—*
 - a) *there is no present right to possession of the property claimed as collateral through an enforceable security interest;*
 - b) *there is no present intention to take possession of the property; or*
 - c) *the property is exempt by law from such dispossession or disablement.*
 3. *Communicating with a consumer regarding a debt by postcard.*

4. *Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.*

Translated Into Plain English:

1. Deceptive collect calls, telegrams or even postage-due letters (that the consumer ends up paying for) is the target of this section of the law. This doesn't happen much, but everything seems to move in cycles in this business. It could always resurface again later—don't get stuck paying for anything.
2. Yet another favorite of your friendly bottom feeder: Pounding you with the threat to repossess your car, your boat, your TV set, you name it—even if they don't have a security interest in any of these. Remember, debt collectors are powerless to repossess anything unless they have a lien on it. And they certainly can't repo something over a debt that hasn't been settled in a court of law. But don't expect them to ever tell you this not-so-minor detail. They'll do what they can to scare you into paying them on whatever debt they're trying to collect.

This portion of the law also prohibits the debt collector from threatening to repo an item even if they have no intention of doing so—"saber

rattling," I call it. If they haven't done it (repossessed anything) before, they don't have a leg to stand on. By the way, if your local or state law prohibits the debt collector from repossessing or disabling a particular item, their threat to do this is also against the law.

3. Back in the dark ages of the 1960s and 1970s, debt collectors used to send threatening postcards about your debt. No more ... not since 1977.
4. Ditto for sending letters that are plainly marked as originating from a debt collection agency. They can put the name of their company on the return address portion of the envelope as long as words "debt [or bill] collection" isn't included in the title. Bottom line: No language and no symbols indicating the letter is from a collection agency.

§809. Validation of debts: *Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing-*

1. *The amount of the debt;*
2. *The name of the creditor to whom the debt is owed;*
3. *A statement that unless the consumer, within thirty days after receipt of notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;*

4. *A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of the judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.*

Translated Into Plain English:

1. & 2. Self-explanatory.
3. This means that if you fail to notify the debt collector in writing (always put everything in writing!) that it's an invalid or disputed debt; the debt collector is free to assume that the debt's valid and will pursue you.
4. Your first love letter from your friendly debt collector must contain this statement, which lets you know that they will pursue the collection of the debt unless you dispute it, in writing, within thirty days from the date of their letter. Remember: The only letter you need to send to the debt collector is my Cease & Desist Letter. Whether you owe the debt or not, don't ever deal with the debt collector. (There's a special Cease & Desist Letter format in Appendix B.2 in the back of this book to use for debts that you are disputing, which also serves as their notice to buzz off.)
5. *A statement that, upon the consumer's written request within the thirty-day period, the debt*

- collector will provide the consumer with the name and address of the original creditor, if different from the current creditor;*
- 6. If the consumer notifies the debt collector in writing within the thirty-day period described that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of the judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector;*
 - 7. Failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.*

Translated Into Plain English:

5. You have the right to know the name and address of the original creditor if you notify the debt collector of this, within thirty days.
6. If you do notify the debt collector that you're disputing the debt, or any portion of the debt, then they must immediately cease any and all collection efforts until they verify that the debt they're trying to collect is valid. They must also mail you a copy of the

confirmation/verification of the debt or judgment.

7. Even if you (the consumer) fail to notify the debt collector within the thirty-day period that you are disputing the validity of part or all the debt in question, this cannot be interpreted by any court that you admit to owing the debt. Don't let a debt collector try to convince you that "you lose" because you didn't notify them in time. Remember Dover's Rule (in case you haven't figured it out by now): Never deal with a debt collector!

§810. Multiple debts: *If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.*

Translated Into Plain English:

Let's say you've got a regular revolving account/credit line with a department store and also an account reserved for large purchases—you know, big-ticket items like fine jewelry, appliances, etc. You have a dispute with the store over something on your revolving account and they eventually flip it out to a third-party debt collector.

In the meantime, they turn your other account over to the debt collector because now you're on their "bad" list and they've decided to cut you off. You continue to pay on the other account for the large purchase that you made

because you have no dispute over this account or amount. But here's where it blows up: You send in your regular payment to the debt collector and tell them to apply it to the account that's correct (the one you're not disputing) and they, in turn, apply it to the *disputed* account. They've just violated federal law.

A debt collector *must* apply the money to the account you instruct them to. Remember to always do this in writing, and make sure you clearly note right on the check itself exactly where you want this payment credited to. Write small and put this on the "memo" line, usually on the bottom left corner of your check. Here's a better idea: Don't deal with the debt collector in the first place and you won't have this problem.

§811. Legal actions by debt collectors: *Any debt collector who brings any legal action on a debt against any consumer shall—*

1. *In the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or*
2. *In the case of an action not described (in the previous paragraph) bring such action only in the judicial district or similar legal entity—*
 - a. *In which such consumer signed the contract sued upon; or*
 - b. *In which such consumer resides at the commencement of the action.*

3. *Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.*

Translated Into Plain English:

1. Let's assume the debt collector's suing you over \$1,000 you owe on a stereo system. Suppose you live in Los Angeles and the debt collector is located in New York. The debt collector cannot cause a lawsuit to be filed against you in New York—they must sue you where the property (the stereo system, in this instance) is located, which is probably with you in Los Angeles, right?
2. They've got to sue you on your home turf, or where you last lived when they filed the lawsuit. Fair is fair: The debt collector can't be expected to chase you all over the country, especially if you're trying to evade your creditors.
3. Nothing in this law may be misinterpreted as a license for debt collectors to file lawsuits. Sorry, guys.

§812. Furnishing certain deceptive forms:

1. *It is unlawful to design, compile and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.*

2. *Any person who violates this section shall be liable to the same extent and the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.*

Translated Into Plain English:

1. Another favorite technique—the use of which runs in cycles—is the creation of a separate "paper" company that is now supposedly assisting or even exclusively handling the collection of a debt. Once again, these wonderful debt collectors will try just about anything to reach their goal of squeezing money out of you, including the creation of ominous-sounding companies that'll try to intimidate you into writing them a check. Don't fall for it. Besides, it's illegal.
2. This means anyone caught playing these reindeer games will get their hand slapped like any other run-of-the-mill debt collector, as outlined in the civil liability portion of this law.

§813. Civil liability:

This section, and the remainder of this law, is more "legalese" that sounds impressive but is rarely utilized. If you're dying to read more about this portion of the Fair Debt Collection Practices Act, refer to Appendix F.

Fortunately, more and more debt collection agencies are being pursued in the civil courts by consumers—and the really bad ones continue to be sued by the Federal Trade

Commission and Attorney Generals across the country. If you're the victim of harassment by these heartless punks, who have no problem crossing the line and using some of these illegal tricks I've discussed, let your tax dollars work for you and go after them. You're now armed with enough knowledge to set the trap, paper your trail, document their violations and make 'em pay.

The good news is that more civil attorneys are now willing to pursue this type of litigation. There have been some huge hits against law-breaking debt collection agencies and, even more importantly, the companies that hire them: the original creditors.

Remember, take them out early with the Cease & Desist Letter. If they persist, you'll move on to Plan B—and drop these clown in the grease. If you don't take a stand against these renegades, it'll only get worse.

COVERING YOUR ASSETS

*"The will to persevere in the face of obstacles
is often the difference between success and failure."*

Anonymous

The biggest threat to your mental health and to your ability to recover from whatever triggered your current financial crisis can be found in the mirror. I'm talking about you, of course.

Once the war with your creditors is on, your biggest challenge is to stay the course and not be distracted by all of the guilty feelings that come with being in financial hell. The fact that you're feeling bad and guilty is a good sign. Let's face it: Some level of remorse about being unable to pay your bills is natural. The majority of our society takes pride in having a good credit rating, and our credit system is built on honor and good intentions. For the system to survive, it's imperative that everyone pay their bills. So you should feel some level of guilt when you can't.

But self-flagellation isn't going to get you out of the ditch any quicker. In fact, it can cause irreparable damage. I've seen it happen many times before: A reversal knocks the consumer-debtor on their butt and they either don't get up, or don't get up quick enough. In the meantime, their self-esteem goes down the tubes, followed quickly by any

relationship they may have had with their significant other—and God forbid there are any kids involved. Throw more gas on the fire in the form of depression accelerated by alcohol or drug use, and you've got the blueprint for a meltdown that will affect far more people for years to come than just a credit card company.

Guilt shows that your intent was honorable. Fine. Now let's move forward and get on with the business at hand: Overcoming the fear of being pursued and, perhaps, even sued.

Insulate Yourself: Preparing for Your Financial Winter

I know first-hand about that awful feeling when the phone rings and you're afraid to answer it. I know all about the fear of going to your mailbox or answering a knock at your front door. (Who could imagine that you'd be afraid of the postal carrier?)

So why should you make yourself such an easy target? Why be so easy to find and so accommodating to the opposition? The answer's simple.

Don't.

Insulate yourself from the debt collectors, and you're more than halfway home on your journey back from creditor hell. Get invisible. Make it hard for them to find you. To some degree (for a little while, anyway) go underground. You have no idea how long this "financial winter" is going to last, so prepare for the worst. As you've

probably already figured out, time is as precious a commodity as money right now.

Step One: Get a Maildrop

Go to the nearest post office (choose a location that's convenient to your home or work) and get yourself a post office box. The U.S. Post Office is my first choice because they tend to have a lower employee turnover rate, and the last thing you need is someone signing for a certified letter, which can inadvertently happen when using commercial mail drops.

Don't give in to going cheap and re-routing your personal mail to your work address. This is always a setup for heartache. Not only will someone forget and sign for mail you don't want them signing for, but the last thing you want to do is mix your personal business (problems) with your professional.

Sometimes the post offices are sold out and don't have any boxes for rent, leaving Plan B: The services of a commercial mail drop such as the franchised Mailboxes, Etc. chain. Like a Post Office box, a place like Mailboxes Etc. allows you to create a new address in minutes. Commercial mail drop companies are even better in some ways because many offer Call Services as part of the package of services you sign up for. This means that you can call them on the phone and check to see if you have any mail to be picked up; many times they'll even look through your mail and give you the "Sender" information upon request.

Warning: When you sign up with a mail drop service, make sure you leave very specific instructions that they are not to sign for any Certified or Registered Mail parcels without your specific consent. The last thing you need (as mentioned earlier) is someone signing for a demand letter for you.

Other Mail Drop Advantages

If you've signed up at a commercial mail drop service, not only do you have a new mailing address, you've also created a new street address as well. Many mail drop centers will allow you to list your "box number" as a "suite" or simply a "#" address. This is another shield to utilize as you insulate yourself, especially if you need to get a new driver's license, personal or business checks, etc. Why?

Debt collectors tend to be creative and resourceful types who have many, many ways to track you down. Process servers are cut from the same cloth too, so throw up some obstacles. Make them work damned hard to find you. They're not stupid. They've got databases loaded with locator info. Their most commonly used resource is the City or Criss-Cross directory (which I'll discuss later) and other directories that list all of the commercial mail drop locations around the country. They'll know what you're doing once you start showing signs of going underground, but that's okay. The fact that you've chosen to remove yourself from their cross-hairs by using the methods I'm describing lets them know that they're really going to have to work overtime if they want to track you down. Otherwise they'll just have to be satisfied

communicating with you on your terms—and that's the ultimate situation.

Worth noting: If you're required to give them (the Post Office or the mail drop company) your actual street address, consider giving them the address of your attorney. Don't have an attorney? Then give them the address of your best friend, or a family member you can depend on. That will work just fine for your purposes and theirs.

No excuses accepted: I don't want to hear any "money's too tight to get a P.O. box" excuses. We already know money's tight right now—but what price can you place on your sanity? Trust me and just do it. You'll be amazed at the new level of control you'll feel and the improved state of mind you'll benefit from as a result.

Step Two: Firing Off Change of Address Notifications

Go to your nearest post office and grab a handful of "change of address" forms, or do it online at www.usps.com, and fill them out. Re-direct all of your mail to your "new" address immediately. Get your latest bills (or threatening letters) and mail back the payment coupon with your new address listed. (Don't worry about sending any money, just use this opportunity to begin distributing your new address information to your creditors.) You're going to start breathing a little easier now that you've started creating some distance between you and them.

Step Three: "The Number You Have Dialed Is No Longer in Service ..."

Ahhhh, yes. The telephone ... the greatest invention ever created for the debt collection community. A tool of identification ... of interrogation ... of intimidation. It's the ultimate weapon of choice for tele-terrorists.

Why consumers under fire answer their phones as they're being pulled under by a financial riptide continues to amaze me. Allowing debt collectors virtually unchecked access to your home (and psyche) at any hour of the day or night via the phone is so easy to counter—especially with the very cool and very affordable tele-screening technologies now available.

By the way: If it seems like I'm spending an inordinate amount of time discussing telephone-related services, that's because I am. You need to know what's out there and what it does, especially since the phone can be a double-edged sword for you right now. On one hand, it's a lifeline that helps you keep your sanity by keeping you in touch with friends or family, or a new job or other money-making opportunity. But if you mishandle your phone-related world and let the opposition use it to beat you down emotionally, it can be a nightmare. With that disclaimer on the table, let's piece together the best strategy for your situation:

Should you change your phone number? Maybe ... maybe not. In the old days this was one of the first steps on your "insulation" list, but you might want to re-think completely disappearing from creditor/debt collector

radars. (I'll explain in a minute.) Here are some alternatives:

Personalized Ring: According to Southwestern Bell's website, it: "lets you add up to two additional numbers to your main telephone number, each with its own distinctive ring and all on one phone line. This allows you to specify a number for high-priority calls."

- **How It Works:** Each phone number will have its own distinctive ring, allowing you to designate specific uses for each number.
- **Implementation Strategy:** Create a new phone number using this service, and give this new number to those people you really want to talk to— friends, family, your place of employment, etc. You'll keep your "old" number intact and working, since that's the number that your creditors and the debt collectors have. If you pull the plug on your existing number, the debt collectors will immediately go into "skiptracing" (the art of finding debtors that have disappeared) mode and begin working their databases to find you.

Make sure that you tell those people that get your new (and private) phone number that they are not, under any circumstances, to give your new number out to anyone without your permission. When the debt collectors go into search mode, they'll use a variety of stories to sucker unsuspecting friends/family/neighbors into coughing up your new contact number. If this happens, you're back to where you started—in their cross-hairs.

You'll want to use the Personalized Ring in conjunction with either a voice mail service like Call

Notes or a home answering machine (with the volume turned down).

Call Notes (voice mail service) or an Answering Machine: One collections executive said years ago that the last thing a consumer buys on a credit card before it was "turned off" by the credit card company was an answering machine to screen out the collection calls that they knew were coming. Once you've gotten the Personalized Ring working, you'll want to have your old/existing phone number roll immediately to your voice mail (widely sold by the phone companies as **Call Notes**).

- **How It Works:** Once again, we'll rely on Southwestern Bell's website for the official definition of this service: "Call Notes voice mail lets you receive messages when you're away from home, on the phone, or online, without an answering machine. You can check messages privately when it's convenient for you (they're protected by your private password, too), and you won't have to worry about missing important calls because your phone was in use."
- **Implementation Strategy:** When you sign up for the Personalized Ring service, tell the phone company representative that you want your old/existing phone number to roll directly to voice mail (Call Notes). Now, when anyone calls your long-time phone number, they'll hear your message ... you're still "there." You haven't gone completely underground, since the phone number your creditors (and now the debt collectors) have in your file still works. But what you've done is create some breathing

room: a barrier, a shield. You've taken away one of their most powerful intimidation weapons, and when you combine the insulating properties of a mail drop with the telephone strategy I've just outlined, the sense of relief you'll have is priceless. They won't be able to reach you, unless it's on your terms.

Alternative: You can save some dough if you already have an answering machine, unless the machine's too old. You'll want to set the machine to pick up on a certain type of ring—the "normal" ring of your existing phone number. Many newer machines have the flexibility to program the types of rings they'll answer. If your machine doesn't offer this feature, either go to the Call Notes (voice mail) option I just outlined for you, or buy a new answering machine that can accommodate these specialized ring programming needs.

Bottom Line: Listen to the messages on your old/existing phone number to make sure you don't miss any important calls from friends, family or potential employers/money opportunities. But let the threatening phone calls roll into your voice mail (or answering machine) and delete them at your leisure. Listen to them if you feel really compelled to, but be forewarned that if you choose to listen to their threatening calls, you're defeating the purpose of this exercise, and it may hurt to hear them. Don't buy into their mind games. Hit the delete button and breathe a lot easier.

Hide in plain view: In the old days I would've told you to get your new phone number unlisted, so let me modify this idea to fit the technology of today.

YES ... you want to make sure the phone company keeps your new telephone numbers issued under the Personalized Ring scenario unpublished and unlisted.

NO ... you don't want to have your old number unlisted or unpublished. In fact, if your old number was unlisted/unpublished, now's the time to put it right out there and let the whole world have a shot at it. You want your old phone number (that now rolls to voice mail or an answering machine) available. That way the debt collectors won't know (at least for a while) why they're not reaching you.

Block your phone identity permanently: Tell the phone company that you wish to permanently block your name and phone number from coming up on the Caller ID of anyone you may call from your number. (If you've got a cell phone, do it on this phone number as well.) You may also be required to send them a letter to this effect (there's a sample letter and additional information about this online at www.bendover.com/noacr.asp).

You've done a good job insulating yourself and creating a layer of privacy so far—don't blow it by giving up your new phone number(s). Be prepared for the phone company to tell you the following: *"You don't have to permanently block your phone number. All you've gotta do is press *67 (or dial 1167 on older, rotary phones) before you make every call and your ID is automatically blocked."* Wrong! What they're telling you is correct but don't do this. Because you're going to forget, or your significant other will forget, and the kids will never remember. Just get it permanently blocked.

"You won't be able to call certain numbers if the recipient of your call has blocked all anonymous phone calls." They're right, but once again, there's a way around this. If you press *82 prior to making a call that might be blocking Anonymous Callers, your phone/name information will be released for that one call, only. (Once again, rotary phone users dial 1182 to achieve the same goal.) Or, if you don't want to give up your name/phone number, for an average of \$1.15 a call you can have the operator place the call for you. Make sure they know that you do not want your name or home number showing up on the recipient's telephone if they have Caller ID. Tell them it's a "security issue" and leave it at that. If you don't know the person or recognize the phone number (if you were just numerically paged with a phone number to call back), the safest way to handle callbacks is from a pay phone.

"You can accomplish all of this and more with our new Privacy Manager service. Here's what it'll do for you ..." No thanks. I'll explain more about Privacy Manager and other similar services with fancy marketing names in just a minute.

What's the secret word? While you're talking to the phone company, be sure to tell them you need to put a **password** on your account. (We'll discuss passwording all of your accounts in greater detail later.) Anyone calling in to the phone company who might pose as you or your spouse or another family member had better know the password or they'll be shut out of any information.

Use a word or name that you'll be able to easily remember (make damn sure you write it down somewhere

where you won't lose it) but do **not** use your spouse's name or middle name or maiden name, do **not** use your or your spouse's mother's name or maiden name, etc. because those creative debt collectors can find out just about anything from your credit files or public records. It's a challenge for many of them, and with the easy access to all types of databases these days, your debt-collecting adversaries know how to use it. They might very well figure out that kind of password.

Don't hang up yet! One more thing to do before you finish your call with the phone company: Give them your new mailing address. Make sure they know where to send your bills as long as you've got them on the line. And since your first stop was at the Post Office (or similar establishment) to get your new drop box/ mailing address, this is a no-brainer, right?

One more thing to be prepared for before you call the phone company: Be prepared for them to try to sell you a slew of calling services "that'll save you money!" You betcha. I'll comment briefly on each service and tell you why you don't want/don't need this particular feature:

Call Waiting: Forget it. It's the easiest way to get caught by the opposition. If you're on the phone, let it roll to voice mail and screen the call on your terms.

Call Forwarding: Why? Again, you want to control the flow of calls and funnel them into your voice mail; forwarding calls to another number sets you up for trouble.

Auto Redial: Like the name implies, it'll automatically redial the last number you tried to call for up to 30 minutes. It's a waste of cash to subscribe to this service, especially since you can already utilize it (if you're really that busy) by pressing *66 (or dialing 1166 on a rotary phone). Expect to see a fee of at least 50 cents per call show up on your bill for every call connected using this service.

Call Return: Anyone can do it now by pressing *69 on your phone for a per call fee. It's a waste of money to sign up for this service, since you can do it as needed on a per-case basis (at about \$1 per use), and especially since so many numbers won't allow this type of "dial back/last number that called you" service. Cell phones and out-of-town numbers usually come up empty, so what's the point?

Caller ID: Supposedly shows the name and number calling before you pick up the phone. Here's a shot of reality: Do you really think the debt collector's going to have their company name or phone number show up on your Caller ID? You can spend your money on this if you like, but if you think it'll be effective in identifying those bottom-feeding debt collectors, you're dreaming.

Privacy Manager: Southwestern Bell's pitch for this service is similar to everyone else's: "Stop unidentified callers—before your phone ever rings. And don't talk to them unless you want to. Privacy Manager is a new call screening service that works with Caller ID to identify all incoming calls that have no telephone number provided, and are displayed as Anonymous, Unavailable, Out-of-Area, or Private." I think you're better off following the strategy I've outlined: instead of screening the debt

collectors out, let them roll to voice mail and feel like they're accomplishing something.

Anonymous Call Rejection (ACR): According to Southwestern Bell: "ACR rejects incoming calls from anonymous callers who've blocked their numbers. Callers will hear a message stating that the party they are calling does not accept anonymous calls. ACR also allows the flexibility to turn the service on or off by dialing a code. Available with or without Caller ID." First off, the phone companies as a rule will automatically install ACR on all new phone service (usually at no charge), and it's a given if you've got Caller ID. Why? Because if everyone read this book or the many articles on my website, and started blocking their identity, Caller ID would be worthless. Don't spend any money on this service.

Call Blocker: Again, I'll defer to Southwestern Bell's description: "Automatically rejects calls from numbers you specify or the last number that called you. You never even hear a ring. Instead, callers hear a recording: 'We are sorry, the party you're calling is not accepting calls at this time.' You can block a number on the spot, even if you don't know who the caller is." It's not a bad service if you're trying to screen out a psycho "ex", but it's pretty worthless on callers from "Out of Area"—which the debt collectors are almost always going to be. Don't waste your dough.

Three-Way Calling: This one's self-explanatory. You're on a budget, right? Enough said.

Here's a terrific service they won't charge you for unless you use it—Call Trace: Especially handy if the bad

guys are really picking on you, it traces an offending call immediately after it comes in. Here's how it works: When you receive a threatening or harassing phone call, hang up and wait ten seconds, then press *57 (if you've got a rotary phone, dial 1157). The last number that called you will be traced (it won't work if Call Waiting is triggered in the meantime, but since I told you that Call Waiting's probably a service you can do without, this won't be an issue).

After you initiate Call Trace, a recording will let you know whether the trace is successful, then it will give you an 800-number to call to take legal action. Be sure to write down the time and date of the call to match up with the phone company's records. They can only give the traced number to a law enforcement agency like the police (in your case, the Attorney General or Federal Trade Commission's office will do) or your phone company's security department. Unless you live in Texas, you'll need to sign up with your local phone company to make it available on your line. Best news of all? Double-check with your phone company, but as a rule there's no monthly fee for this service, and you'll only be billed if the trace is successful. The average fee per "hit" is around \$7.

Beware of toll-free numbers and phone cards:

These are two "devices" that the collection industry will frequently use to trip you up and find your new telephone numbers. Even if you followed my advice and permanently blocked your name and phone number identity on your home or cellular phone, this exercise is powerless when it comes to any toll-free (800-series) phone numbers.

800 numbers: Every time you call a toll-free number, the phone company providing the service provides their subscriber (the people paying for your "free" call) with something called an "ANI" listing. "ANI" stands for "Automatic Number Identifier," technical jargon which translated means that every time you call in on an 800-series telephone number, the party on the receiving end may instantly know the telephone number from which you're calling.

American Express was one of the first companies to leverage this technology extensively, in the name of high-tech customer service. As a former American Express cardholder, I remember calling in from my home number once, and being greeted by an operator who said, "Good evening, Mr. Dover! What can we do for you this evening?" American Express initially looked like quite the trendsetter, really on top of their customer service-driven game. But then the negative backlash began. *Big Brother was watching*. Not only did the American Express customer service operator know it was me calling, but they also had all of my account information in front of them on their computer screen. I guess this didn't go over so well with American Express customers, because AMEX service representatives don't do this anymore. Of course that's not to say that they don't still have the technology in place. Pretty intimidating stuff.

I guarantee you that your pals at the collection agency are using this technology, and love to "pop" unlisted phone numbers from under-informed debtors. Be smart if you want to save money when you communicate with your creditors on their dime, via a toll-free number. Pay phones are great, because the phone companies, in their quest to

shut down the drug dealers or other bad guys that used to utilize pay phones, rarely allow pay phones to accept incoming phone calls anymore.

Hotel or motel lobbies always have quiet areas where you can make your calls from a pay phone safely. Just don't make the mistake of calling from your home, or from any other number that you don't want the debt collector calling back. Make the mistake of calling from a friend's house, from work or from church (or any other place you frequent) and you can expect the debt collectors to call that number back looking for you. That could be intimidating and embarrassing. Don't give them the chance.

Another favorite trap—calling cards: Remember that most calling cards require you call in through their network, usually starting the process with (you guessed it) an 800-series toll-free number. Sometimes if you try to use a calling card from what you thought was an Anonymous/Blocked ID phone number—even if you thought it was safe since you were using the calling card—you fall right into their hands.

Baiting the trap with free calling cards: A favorite technique some collection agencies use to locate someone who's gone "underground" is the use of free, prepaid long-distance calling cards. You get a special, introductory-offer, free long-distance calling card in the mail that looks like an offer to get you to sample this (supposedly) "new" long-distance company. Of course, since money's tight, why wouldn't you use this "free" long-distance calling card? So you do.

Like any calling card, it requires you to call their 800 number, punch in the phone number you're calling and then the access codes. The minute you do—they've gotcha! As described earlier in this chapter, the ANI (Automated Number Identifier) technology kicks in, and the collection agency simply waits to see what phone number of origin pops up. Your plans to keep your home or cell phone number out of the hands of the opposition have just been blown out of the water.

Dover's Rule? If you're really hell-bent on using the "free" calling card, do it from a pay phone. Just remember that they'll have a record of all of the numbers you've called, so don't be surprised if they start calling those numbers to try to locate you. If it were me, I'd give the free calling card to a homeless person and let them reach out and touch someone, courtesy of your pals at the collection agency.

Step Four: Licenses to Find You

Know what really infuriates me? The states around the country that continue to use your Social Security Number as your driver's license number. This is such a blatant intrusion on—and invasion of—*your* privacy. Driver's license information in many states is still too easy to obtain, although some states have begun restricting public disclosure of this information. Unfortunately, it took the murder of actress Rebecca Schaeffer in the early 1990s (at the hands of a deranged fan who got her address from public driver's license records) to finally change this dangerous practice.

Nevertheless, it's still not that tough to obtain this information, if you know where to go. As a result, this is obviously another potential breach in your newfound shield of privacy. Next stop? Your state's Department of Motor Vehicles—and whatever agency handles automobile registration.

1. Change the official address listed on your driver's license. Many states require a street address—what a terrific opportunity to plug in your new mail-drop service address!
2. Change the address on your motor vehicle registration. (You do know how easy it is for almost anyone to run a license plate, don't you?) Cut off the opposition early and do this to keep your armor of privacy intact.

Utility Bills, Insurance and Banking Accounts—All Potential Roadmaps

Now that you've gotten your address, phone number, driver's license and vehicle registration all changed to your new address, let's wrap up the remaining loose ends as you insulate yourself for the challenges that lie ahead. It always seems to be the little stuff that trips you up, so you've got to think as deviously as the debt collectors who are going to be looking for you.

Electricity, water, cable company, insurance, et al.: Remember the drill I put you through earlier in this chapter about passwords? Turn back and review the "**What's the secret word?**"section. Then apply the same strategy to:

- Your electricity provider. Obviously they know where you live. Make sure they do not give up

any information about you that could pierce your shield. Same goes for the water and cable companies, and anyone else who provides you with a service at your residence.

- Your insurance company is another rich source of location information. Those in the skiptracing business will pull what's known as "header" search to locate you. There's usually some valuable location information (outside of credit info) in these reports, and much of it's obtained from insurance company databases. Whether it's health or life insurance, automobile, homeowner's or renter's insurance, it's another potential hole in the private information dyke. Plug it. That's what your new mail-drop address is for.

Banking in America: Your Privacy is not FDIC Insured

This is another area that can cost you your privacy, so you've got to be smarter than the opposition.

1. If you still have a checking account, immediately change the address on your checks and account information. The fewer questions you have to answer, the better; if you can, notify your bank in writing, but with the growing problems connected with identity theft, this may be more difficult to accomplish.
2. Give the bank your new mailing address, and leave the existing/old phone number information intact (you want them to have this it

suggests stability if the number's the same). The banking side of this drill may be easier to accomplish once you've gotten your new driver's license. Don't be lulled into a false sense of security thinking your bank will keep all of your private information private. Sometimes people make mistakes ... and people work at banks. Be smart, not sorry.

3. When you re-order your checks, be sure to include only your name and mailing address. Nothing else! Honest—you really don't have to include anything more than what I'm telling you. Besides, I'm amazed at the life histories some people put on the front of their checks—full names, street addresses, home telephone numbers, his driver's license number/her driver's license number, his Social Security Number, her Social Security Number. Hell ... why don't you just attach a copy of your last three years' income tax returns while you're at it? Do you realize how many people handle just one of your checks? Just think about how many clerks in a store will look at the front of your check in the normal course of business. They know everything they need to find out anything they want about you, from financial information to medical information, copies of your credit card statements or phone bills. It really isn't that tough. This is a recurring theme in this book: *Don't make it any easier than you have to.*

What's in their reach—and what's not?

Do you or your spouse have any judgments coming your way in the near future? Any liens, garnishments or even lawsuits getting ready to take root? Then you'd better learn early on what's in their reach—what they can actually attach—and what's not. I've included some charts that outline what's exempt and what's not on a state-by-state basis. It's located in the appendices section in the back of this book.

Our country's composed of 50 states with 50 potentially very different sets of laws governing debtor's rights. States like Texas and Florida are very kind to debtors and protective of their assets, but most are not. And with the federal bankruptcy changing soon—combined with the knee-jerk reactions resulting from corporate irresponsibility and accounting debacles like WorldComm, Enron and Arthur Andersen—the rules of the game are definitely in a state of flux. I'm not going to try to cover all of the changes here, because by the time you eventually read this, half of them will probably be changed or outdated.

Go out of your way to access the Internet (if you can't already) and check out the latest and greatest changes in the world of asset protection and related topics at www.bendover.com/assetchanges.asp. And remember: The laws change constantly, and you need to get qualified legal counsel in your state to make sure you've got a clear understanding of what's at risk and what's safely out of the reach of your creditors. Legally plan and protect whatever assets you may have left, or risk losing everything. The choice (as always) is yours.

4½ STEPS TO ELIMINATING THE DEBT COLLECTOR

"Nothing is more terrible than activity without insight."

Thomas Carlyle

A recurring theme on my radio shows, TV segments, newspaper column, website and—oh yeah—throughout this book is straightforward enough: Knowledge Is Power.

As you prepare for battle with the debt collection industry, the importance of understanding who your opponent is, what drives them and how they work will become more apparent than ever before. This is absolutely the most important chapter of the book. It's your blueprint for eliminating your not-so-friendly debt collector from your already complicated world, forever. In fact, I urge you to read this chapter at least two or three times. It's not *War and Peace* ... so do it!

What To Do When The Debt Collector Calls

Since you're reading this book, it's a good bet that you've already received a phone call or two from our pals in the collection industry. Even if you've already made deals and think you've got "everything worked out" or "under control," it's probably a good idea that you become

familiar with what you need to do the next time the phone rings.

Step One: Figure out who you're dealing with. Don't be afraid to immediately turn the tables on that voice on the phone; they've been bold enough to call you at work or at home, so they'd better be willing to answer your direct line of questioning. Ask them these important questions:

1. What is your name?
2. What is your title?
3. What is your phone number?
4. What is the name of your company?
5. What is your mailing address?

Be courteous—there's no need to be combative. Just tell them that you're working at trying to get out of the mess you're in financially and really want to get all of your debts paid off, but you've got to keep "everything straight" and need this information.

Since they're definitely not used to a consumer-debtor turning the tables on them so fast, expect them to cop an attitude. Take a breath, remain calm and:

1. Don't let them upset you.
2. Don't let them start quizzing you.
3. Don't be sucked into their game. Don't answer any of their questions unless and until they've answered the five questions I've just given you.

Hold your ground, and reaffirm that you want to get this whole mess behind you, but you've got to budget what money you do have, and have got to keep good records on who you're paying, and how much.

You've Got to Play a Crucial Card

This next phrase is *extremely* important. Tell them: "I don't believe the account balance is correct, and you need to know that I'm disputing the validity of the balance you're trying to collect. So before we go any further, I need to get copies of the account history—then we'll discuss getting you paid."

This is crucial, because now what you've done is invoked your rights under the FDCPA, specifically outlined in Section 809: Validation of Debts. They've got five days from their initial contact with you to send you:

1. The amount of the debt;
2. The name of the creditor to whom the debt is owed;
3. A statement that unless the consumer, within thirty days after receipt of notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
4. A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of the judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.

The debt collector is obligated, under federal law, to give you the information you're asking for. And your counter-offensive continues: "By the way, (Mr./Ms. Debt Collector), if you want to collect any money on this debt,

I need to get this information from you first—after all, you're just a voice on the phone. I've got to know who I'm working with, don't I?"

Boy oh boy. Now you're talking. These are very money-motivated people. They can smell a quick commission and spot an easy mark. Even though you're asking a few questions, you sound reasonable enough. Ah yes ... a quick payday.

"Would you do me a favor?" you ask the tele-terrorist.

"Would you send me a letter with all of the information I just asked for, plus the information about my account? I need something in writing to confirm what and who I owe, especially since I'm going to have to borrow the money from my parents (or sister or brother or whomever you want to reference in this little game of strategy) and they're going to require a statement and payment information before they'll give me the money."

Now finish them off and whip them into a frenzy with this final setup comment and question: "Make sure you're clear on where I need to send my money—and will you accept a personal check from them, or do I need to send you a money order?"

Your newest best friend the debt collector will be doing everything in their power to keep from wetting themselves as they try to mask the excitement in their voice. But expect them to put the full court press on you right now, right on the spot.

Their job is to go for the kill and get money out of you now. They'll press hard for checking account information so that when you do have the cash, they'll be able to make it easy on everyone involved and simply draft the money right out of your account. And if they can't get any cash, they'll go for post-dated checks. And if they can't get post-dated checks, they'll push hard for a commitment from you to pay them. It's the psychology of the collections game, and it's how they get paid.

No matter what, you've got to hold your ground and refuse to agree to anything unless and until you receive the statement on your account. Remember who you're dealing with; if you need your memory refreshed, go back and re-read Chapter 4.

Step One-and-a-Half: If the debt collector won't play ball and send you the letter you've clearly requested, they've set themselves up for failure. Right off the bat, they've broken the law and are actually strengthening your position:

-- If they give all of their contact information (their name, their agency name and address, the name of their client/creditor, etc.) over the phone, then proceed to Step Two, Part A

If they comply with your request and mail you all of the requested information, then proceed to Step Two, Part B.

Step Two, Part A: Now that you've gotten the necessary (and important) information from them over the phone, it's time to have some fun and fire out the Cease & Desist Letter (always via Certified Mail/Return Receipt Requested); a sample is located in Appendix C . All of the

information on how to send Certified Mail is covered in Appendix C.

Step Two, Part B: Once you receive the information you requested from them in the mail, have fun and fire out the Cease & Desist Letter/Disputing Account Validity (always via Certified Mail/Return Receipt Requested); a sample is located in Appendix D. All of the information on how to send Certified Mail is covered in Appendix C.

No matter which scenario applies, turn on some nice music. Pour yourself a drink and then savor the moment as you begin writing your letters. Enjoy your leverage and mail your letter(s) immediately.

And don't even think about cutting corners. Send these letters via Certified Mail/Return Receipt Requested, or don't even waste your time sending them. Sending the letter via Certified Mail/Return Receipt Requested is the most effective means of invoking federal law. Don't ask questions on this one, just do it.

Step Three: Always paper your trail. Always take good notes and keep good records; go to the local office supply and buy a large day-by-day appointment book. Make sure it has plenty of lines to write notes about the day's events, hour by hour. Why?

Because you have to keep all of your notes straight. Confusion's the last thing you need right now; if you document your attack plan at every turn, you've got 98% of the battle won!

1. Keep this daily planner by the phone that you use the most. You know which one—the one you make the majority of your calls from, the one you usually answer.
2. If the debt collector calls and you don't have your book near by, tell them to either call back or put the phone down and go get your book. Make them wait; they're the ones that are invading your privacy.
3. Do you still have Call Waiting? Call the phone company and have them remove it. Aside from being an extra expense you can do without right now, you don't need the potential distraction. If you're engaged in another telephone conversation with a prospective employer, an ex-spouse or maybe even another debt collector, the chances are pretty good that your emotions will be running high. Operating at this emotional level will set you up for error, making you vulnerable and more susceptible to mistakes. Don't worry: If your line's busy, the debt collector will always call back.
4. Make note of your first contact with the debt collector. Write down as much information as possible, being sure to note the time of day they called.
5. Be sure to clearly note all additional calls from the debt collector. Specify the time they called, the name of the person calling and what account they're attempting to collect. This is important information. Write down as much about the conversation as possible.
6. Be sure to document (in this same book) the day/date you mailed your Cease & Desist Letter

to the debt collector. Note the account information, the collection agency and the name of the individual collector you mailed it to. (Be sure that you always keep copies of all of your letters, keeping these and all of the receipts together.)

7. When you get the green return receipt card back in the mail from the post office, make a note in your book of the date the debt collector received your letter. If you can decipher it, make note of the name of the person that signed for your letter, too.
8. Very Important! Clearly note when the next contact is made by the debt collector. Since you may not have received the green return receipt card (showing the date they got your Cease & Desist Letter), it's imperative that you always keep an accurate call-and-contact history in your book.

Once you get the return receipt in the mail, circle the date they received your letter in red. This is extremely important to note, since federal law dictates that the debt collector can contact you only one more time after they've received your notice that you've fired them. (Remember that Cease & Desist letter you hammered them with?) Every call they make or letter they send you after their **one last contact** after receiving your letter is a violation of the FDCPA: Public Law 95-109, the Fair Debt Collections Practices Act. The better job you do to document every phone call, every letter and every contact, the better your chances of burying the debt collector, their agency and maybe even the original creditor. Paper your trail and you'll turn the tables on the debt collectors!

Getting the Real Story: Finding Out What's Been Reported

You've got to know what's being reported to the credit bureaus as you work your way through the debt collection nightmare. How those accounts will be reported is a crucial part of your negotiations—with the original creditor, never with the debt collector.

Step Four: Know what your creditors and their hired guns are saying about you. You have to start the game with "all of the cards in the deck," meaning you've got to know what's already been reported about your outstanding debts and overdue accounts. This means you'll be contacting all three of the national credit reporting bureaus to obtain current copies of all of your credit bureau reports.

The "Big Three" credit reporting agencies (also referred to as CRAs, but I'll use the term interchangeably with credit reporting bureau, too) will provide you with information that's going to be crucial to the success of the negotiations you're positioning for. Experian (formerly known as TRW) and Equifax are clearly the better of the three reporting agencies. TransUnion is the consistent third-place credit reporting agency ... and they're consistently awful. I've received more complaints about their inattentiveness over the years than the other two companies combined.

Further evidence of this is the \$5.3 million verdict returned against them in July 2002 for violating the Fair Credit Reporting Act (FCRA). TransUnion repeatedly failed to correct errors in Judy Thomas's credit report,

reporting the bad debts of another woman (Judith Upton) as Thomas's for six years, even though Thomas repeatedly asked them to fix the errors. After a six-day trial, the Portland (OR) jury ordered TransUnion to pay \$300,000 to Thomas for harm to her reputation and health, but even more significantly, they ordered the company to pay \$5 million in punitive damages, making it the largest verdict in FCRA's history and a huge victory for every consumer in this country.

Now, more than ever, the information that's being reported about you to the credit bureaus needs to be as positive as possible. And while I recognize that you're going to take some hits in this area while you're trying to get back on your (financial) feet, the key now is damage control, as well as using all the leverage available to minimize the extent and severity of negatively reported information.

Bad credit will cost you more than just higher interest rates. We all understand the correlation between lousy credit and higher borrowing costs, but it can make other expenses which you might not have even considered, skyrocket. Insurance companies routinely use credit scores as a tool to compute risk and premiums, many prospective employers will make hiring decisions based on credit history-even applying for government-issued licensing or financial aid can be impacted. So it's important that you minimize the damage as much as you can while you've still got some leverage. But the first step in this phase of damage control is knowing how bad it really is.

Credit Information Access: It's Never Been Easier

If you've got access to the Internet, you've got virtually instant access to your credit reports. All of the credit reporting bureaus have significant websites and the capability to sell you a copy of your credit report on the spot.

The good news is that under federal law, you might not have to pay as much as you think in order to get a copy of your reports. You can obtain a copy of your credit report for free from the credit bureau that supplied information about you to a creditor, prospective employer, insurance company, etc. within 60 days of their receiving information about you. You're also entitled to one free report every twelve months if you certify that:

- You're unemployed and plan to seek employment within 60 days;
- You're on welfare; or
- Your report's inaccurate due to fraud.

Otherwise, the CRA may charge you a fee of up to \$9 per report. Make sure that you:

- Get copies of your credit report from each CRA, even if you have to pay for it.
- Get a copy of your spouse's reports (if you're married) as well.

Get online and get informed at once. Their websites will walk you through the process easier than I can in this forum. Go to www.experian.com, www.equifax.com or www.transunion.com to get the ball rolling. Each CRA will make you jump through some hoops to authenticate your identity, since identity theft has

become such a problem. If you can't adequately prove your identity to them online, you're going to be forced to do it the traditional way, via mail (and explained below). By the way, updated information about dealing with the credit bureaus can also be found on my website: www.bendover.com/creditreporthelp.asp.

No Internet access? No sweat. For those of you without access or who simply want to handle it the old-fashioned way, here's what you need to do:

- Follow the Credit Report Request (form letter) I've prepared for you in Appendix A. Sample letters, complete with the current address information for each CRA, are included—but you'll need to call each bureau to verify their current address information. For some reason they change their addresses as often as someone in the Witness Relocation Program, so call each bureau first to verify the information.
- Be prepared to present proper identification in order to receive your credit report. With identity theft reaching epidemic numbers (try 700,000 people ripped off in 2002 alone), you really shouldn't mind proving you are who you say you are to the CRAs.
- Here are their current toll-free numbers, but like their addresses, these change from time to time. If a number below has changed, the current number's posted on the website, or call toll-free directory assistance at: (800) 555-1212.

Experian:	(888) 397-3742
Equifax:	(800) 685-1111
TransUnion:	(800) 888-4213

Should you buy a "convenient" merged report?

What is a merged report? There are a number of companies out there selling these reports that are actually all three credit bureau reports merged into a single (supposedly easier-to-read) report. They charge more for these, but pitch you on the fact that even at the price they're charging, it's cheaper than getting all three reports from all three CRAs. And the question remains: Should you bite on this offer?

Not in my opinion. It's easier to deal with each CRA separately and individually after you've gotten a single report from a single agency.

Should you buy one of these "enhanced" credit reports that includes your credit score? Sure. Why not? At the current price of \$12.95 each, they're only a few bucks more than the standard, traditional reports (that average \$8 a pop). Besides, I think people like to see something that's more quantitative. We're used to grading ourselves, going all the way back to when we were kids in school. Go for it.

A few closing thoughts about your pals at the credit bureaus: As you're preparing to get your hands on your credit reports and move ahead to the next challenge, here are a few facts to keep in mind:

- There are over 1,000 credit and mortgage reporting companies in the United States.
- There are over a half billion credit files on American consumers.
- 50% of all people who view their credit reports end up disputing information.

- 75% of those reports disputed were corrected by the credit reporting agency.
- One of the (still) favorite techniques of the debt collector is the threat of blackmailing you with negative information on your credit report.
- Another increasingly popular tactic by the debt collector? Threatening to report your debt to the IRS.

Ben's Bottom Line: If you don't know what your credit files contain about you, you're being both blind and foolish. There's a 50-50 chance that your credit reports contain erroneous information. And if you've been dealing with a debt collector, there's a 95% chance that you already have negative information on your credit report. Start smart and only deal from strength. (Knowledge is power!)

Remember: The only leverage you've got is the cash in your hand. Negotiate with your creditors about how your account will be reported once you've paid them off under the new terms you're about to work out. If you don't get them to agree up-front and before you've repaid the debt, you're screwed. Be honest, be ethical and be smart—but play to win. They always do.

Same Account: New Debt-Collection Agency

Now that you've cut your friends at the debt-collection agency off at the knees with the Cease & Desist Letter (in the industry they call it "being cease-commed") expect one of the following actions:

1. The debt collector will turn your account back to the original creditor;

2. The debt collector will turn the account over to an attorney to sue you;
3. The original creditor—after having your account given up by the collection agency because of your Cease & Desist letter—will assign your account to another collection agency;
4. The original creditor will assign it to an attorney to sue you;
5. The original creditor will realize they're not going to get anything from you easily, will simply "write off" your account as uncollectible, and you won't hear anything again.

Let's take a look at each scenario:

1. **Debt Collector Turns Your Account Back to the Original Creditor:** No need to take any action here ... you're back at square one. Wait and see what the original creditor does.
2. **Debt Collector Hires an Attorney to File Suit:** If you had the money in the first place, you would've paid them, right? If the attorney contacts you, send them a Cease & Desist Letter. Many attorneys make a ton of dough threatening consumers with lawsuits and collecting debts. If an attorney collects two or more debts a year, under the FDCPA they're considered a debt collector. Take them out with the Cease & Desist Letter. If they sue you, they sue you. You don't have the money anyway, so it doesn't mean they're going to collect anything. You've got the ultimate hammer anyway. It's called bankruptcy.

3. **Original Creditor Re-Assigns Your Account to a New Collection Agency:** So they assign it to another collection agency—you know what to do, right? Reload and send them a Cease & Desist Letter. Trust me, it'll work again. If they want to send it to another collector, that's their decision. And it's your decision—as well as your right—not to deal with the debt collector.
4. **Original Creditor Assigns Your Account to an Attorney to File Suit Against You:** See #2 above; follow the same course of action.
5. **Original Creditor Does Nothing/Writes Your Debt Off:** Now you're in a position to renegotiate and (eventually) repay the debt. If you can re-trade and repay the debt under new/revised terms, then go for it. If you can pay back 100 cents on every dollar you owe them, terrific. But remember, once they assigned your account to a third-party debt collection agency, they as much as told you that they were willing to settle for less.

Debt collectors don't work for free, and the original creditor was willing to give them anywhere from 30-50% of what they collected. So why won't the original creditor let you settle for 50-70% (or less) of what you owe them? They will. But you've got to be aggressive, deal with the right person at or near the highest level at the company (not some voice working their toll-free number—they have little dealmaking latitude) and always get it in writing.

A key part of your re-negotiated deal? Making damn sure that they agree to delete all negative information about this account reported by them directly—or by their

hired henchman, collection agencies or law firms that may have attempted to collect the account—from all credit reporting bureaus in the nation. That's all you want. Isn't that easy? If they don't agree, then I guess they don't want their money.

Tying Down Loose Ends And FAQs

There are a few situations that I still need to address, since I know you'll probably encounter one (or more) sooner or later.

1. **"What happens if I got your book too late? (I've already been dealing with a debt collector!)"** Not to worry—you can fire off a Cease & Desist Letter and fire them anytime. It's never too late to cut these cancers out of your life.
2. **"But I've been repaying the debt collector for months; haven't I given up my right to dispute the debt because I failed to notify them of this during the first 30 days?"** Nope. As referenced in Section 809 of the FDCPA: "Failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer." If you didn't know this law existed—and you didn't know your rights and, more specifically, your right to dispute the validity of the debt—then how could you have been expected to "notify them in writing" within their magic 30-day period?
3. **"The debt collector's threatening to report me to the IRS if I don't pay them; can they**

really do this?" Yes. The laws changed, and they now require that original creditors send debtors an IRS Form 1099 for any unpaid debts that have been charged off. In the eyes of the taxman, it's debt forgiveness—which they interpret as income. But it's not the end of the world. There are two ways to handle this. But first, the *"always rely on qualified advice from a Certified Public Accountant or tax attorney before proceeding"* disclaimer. Okay, if you get hit with 1099s by the creditor (or their collection agency):

- Confer with a qualified tax advisor and ask them to research the option of invoking something known as the Insolvency Rule. In essence, this little-used part of the tax code says that if you're broke (insolvent) that this type of gain/income can be neutralized and no taxes levied. Again, you'll need to obtain qualified counsel to play this card at tax time.
- Compute the taxes owed and get on with it. Even if you're liable for taxes on the debts forgiven, it's still less than what you would've repaid. I know the last thing you need right now is a tax bill, but at least you can get an automatic installment plan (if your tax debt owed is less than \$10,000). And if you're really broke, you probably need to investigate doing what's known as an Offer In Compromise with the IRS. More information about this and all breaking developments can be found on my website: www.bendover.com/irs.asp.

4. **"You like to 'roll tape' on the debt collectors when they call, but isn't that illegal? Won't I get in bigger trouble trying this tactic?"** Depends on what state you live in. Federal law allows recording of telephone calls with the consent of at least one party to the call. This means that if an individual places, receives, or joins a call, that individual may record the telephone call (without giving any warning or notice) and may later make use of the recording (including courtroom use). But there's also the issue of states exerting their own rights in this area. Only 12 states don't allow what's commonly referred to as "one party consent" in the telephone recording world.

I suggest you read and then reread (several times) this chapter from start to finish. While debt collectors are predictable, your emotions and how you'll react once you "engage the enemy" are not. The insights you've picked up from this chapter will not only help you avoid making costly mistakes, they'll also enable you to execute your plan of attack ... and even rest easier.

The more familiar you are with this material, the better off you'll be.

CREATIVE WORKOUTS

"There is no failure except in no longer trying."

Anonymous

"You can't get blood out of a turnip."

This phrase is probably banned from every collection agency on the planet, because it's the firm belief of the debt collection industry that no matter how bad your financial situation is, you'll come up with some dough. If nothing else, you'll come up the cash—somehow and someway—and send it to them just to make them go away.

Your cash flow's gone to hell, your world's spinning out of control and you're fading the heat of phone calls and letters from your creditors. You've tried to be up front, you've tried to be honorable and you've tried to explain your situation to them: Sorry, but you can't send them any money right now.

What's the creditor going to do? After you've bared your soul to them, explaining your situation and asking for continued time, patience and understanding, you realize you might as well have been telling your situation to the family pet—or a tree, since the response would be about the same.

"We have our rules. If you can't pay, we'll just have to turn your account over to our collections department, as well as place this information on your credit reports." Uh-oh—now you're scared. Yeah, *right*.

We've already solved the debt collector dilemma. You're not gonna pay hush money; you're not gonna be threatened or blackmailed by these punks. You're not gonna pay them, period. You don't owe them the money and you're not gonna be browbeaten and coerced. Besides, you now know how to take them out. You drop them in the grease by firing off a Cease & Desist Letter, and your account gets kicked back to the original creditor.

Even though the original creditor may very well kick your account back out to another debt collection agency, you'll simply reload and fire them, too. You'll wear them down. You've got the knowledge. You've got the insight. And most important—as difficult as this may be to believe right now—you've got the upper hand.

You have the money. Maybe you don't have it right now, but they're betting (perhaps "hoping" is a better word) that eventually, you'll have the cash and be able pay back all of your original creditors.

Since you're preparing to order copies of all three of your credit bureau reports (and your spouse's if you're married), this is your first step towards learning the way the renegotiation game is played, and be able to eventually repay your debts.

Do *not* agree to any terms that you're not 99% sure you'll be able to meet. All you've got going for you right now is any credibility you might have remaining. You're out of cash and your credit's shot by now, so the only semi-tangible asset you've got left is your word. Your intent, and the level of sincerity that you're able to convey to your creditors (now circling like vultures over roadkill), can make the difference between success and total failure.

I really understand (because I've been there) what it's like when you're in this situation: You're not used to being in this financial shape. You're embarrassed, and to a large degree, you're scared, because you're afraid of what they're gonna do to you. So you'll make deals—any sort of deal—just to get these people off your butt. When I tell you that time's as precious a commodity as cash right now, I know that you understand what I'm talking about.

But if you make a deal to pay someone and then can't—and don't—deliver, then you've probably shot yourself in the foot for the last time with the creditor. They've heard it all before, and even though your intentions were honorable and you really were going to repay them (honest!) it doesn't matter anymore. They'd rather take the loss and move on. If you owe them a bunch of cash, they *may* spend the extra time and effort to sue you. *May* is the operative word; they'll be able to get a pretty good picture of their chances of recovering anything (once they do get their judgment) after running your credit reports and surveying public records. The credit reports will show them how deep you're buried and how many other people you owe; the public records will give them a look at any judgments you've already been hit with, or lawsuits

pending, or if you have any real property for them to go after and eventually try to seize.

As a general rule, creditors evaluate your situation and base their Shakespearean "To sue or not to sue, that is the question" analysis on two key information sources:

1. Credit reports
2. Public records

Worse Is Better?

Believe it or not, all of the accounts being charged off and the barrage of R-9 or I-9 notations that littered my credit reports back in the bad old 1980s were actually my best, front-line defense against my creditors. With today's enhanced and more user-friendly consumer credit report formats, old codes like R-9 are a thing of the past. Today's credit reports usually just call it what it is:

- Instead of an R-3 code, today they'll simply state the number of times you've been 60 days past due on your Visa card ("R" representing a revolving charge account).
- An I-5 is now replaced by a notation explaining the number of times you've been 120 days past due on your car loan (the "I" representing an "installment" note, like a car loan or a mortgage).

Today's creditor (and their hit-men debt collectors) look at the same data that's always been on your credit reports:

- Personal data, including your:

- Full name and any previous names (frequent notations for women that have gone through marriage—status, related name changes, as well as members of the government Witness Relocation Program) or derivations (Jr., Sr., III, etc.)
- Social Security number
- Date of birth
- Address information:
 - Current address
 - Previous address(es)
- Employment information:
- Current employer, their address, dates of employment, "last verified" by the credit bureau notation
- Previous employment history
- Creditor information:
- Name of each creditor and their address, account number, date opened, high balance, current balance, last payment, payment history
- Inquiries (names of companies obtaining copies of your credit files in last 2 years)
- Collection information:
- Name and address of collection agency
- Account information, sometimes including original creditor info, date assigned, amount owed
- Delinquent information:
- Sometimes delinquent accounts are listed separately here, partitioned from other, "current" creditor information
- Public Records:
- Judgments
- Tax liens

- Child support-related

Credit scores: On the score-enhanced—and more expensive—credit reports available from the Big Three, they've started including additional information which contains their spin on your credit history data. They've finally reduced the consumer version of their reports to a number (grade) that their subscribers (credit grantors, mostly) can digest in one glance. Until recently, the credit bureaus used shorthand slang to reference these credit scores: Experian's was known as Fair Isaac [better recognized today as FICO], Equifax's was known as Beacon and TransUnion's, Empirica.

The credit bureaus finally woke up and realized they were leaving big profits on the table, so they began regurgitating and repackaging their information into user-friendlier "score-enhanced" reports selling at a premium over the traditional nuts-and-bolts reports. Bottom line for you? Now you can see the same numbers your creditors and the collectors are seeing. And the harsh cold reality of the credit and collections world? The lower your number, the lower their chances of seeing any money.

They'll never publicly admit this, but it's true.

If the roles were reversed, would you throw good money after bad? Would you continue to spin your wheels and spend your resources trying to collect from someone who's obviously in financial trouble? It simply doesn't make sense to pursue a judgment if you're never going to collect it.

Those low scores on your credit reports scream volumes to creditors or their hired-gun debt collectors to move on and cut their losses. Sometimes, the credit bureaus and lousy credit can actually advance your cause. For now, anyway.

Creative Workouts, Part One: Autos

Back in Chapter 6 I covered the "secured" vs. "unsecured" creditor concept. Your car dealer is a classic example of a secured lender that will always get their security back, so be smart and try to soften the eventual financial impact of the dilemma you're now facing.

If you know you're heading for some bumpy financial roads ahead and are going to get behind on your car payment, consider using one of the following strategies:

- If you have enough equity in your car, try selling it to pull some cash out of it instead of losing it in a costly repossession. This will only work if you can sell it for more than what's owed on it.
- Begin working to buy a decent and (hopefully) reliable new or used car before you destroy your credit—a few month's head-start could secure an interest rate that's a fraction of what you may eventually be forced to pay. If you know you're going to have to downsize, get the new car as early as possible before you give them back the car you can't afford.
- Stash the cash:
 1. Quit making payments on your current vehicle.
 2. Begin accumulating that money which you'd normally be using for payments on

your current car (you know you're going to give it up) toward your next replacement car down payment. This may take tremendous discipline; if the temptation to use this money on other pressing needs is too great, consider giving the cash to a trusted friend or family member.

3. Once you've secured your downsized replacement car, contact the finance/lease company (for the car you can't afford) and tell them you're giving the car back. Get all of your personal possessions out of the car, and don't trash it. Clean it up and attempt to handle this "voluntary repossession" with dignity. Before you let them have it, make sure you take pictures of the interior and exterior of the car, noting the mileage. You never know, this may come in handy later.

Try to work out a deal with the finance/lease company on how the repossession will be reported on your credit report. They may be willing to work out a settlement on the balance owed on the car (after they sell it; this is known as a "deficiency balance") if you pay this amount (once you've gotten your financial situation back under control). Then again, they may not. All you can do is try; like asking for a date, the worst they can do is say no. Many finance companies won't waste time trying to come after you for the deficit owed since it may not be worth the headache. Then again, they might pursue you. But if you're broke, you're broke. If they get a judgment, it's just one more thing for you to flush in bankruptcy court if you take that route. It's not the end of the world.

Voluntary repos cost less: If you turn the car over on a voluntary repossession, the amount you owe later—if and when this ever becomes an issue—will be less. Why? Because the finance/lease company won't have to employ a "repo man" to find and repossess your car. These guys make anywhere from \$200-\$500 per car to locate and "re-acquire" vehicles, so if your current lender doesn't have to hire someone to find and repo your car, that's one less expense. Don't play cat and mouse with the repo man; they'll always find the car, and probably at the most inopportune time.

Creative Workouts, Part Two: Houses

Here's another situation in which a secured creditor will always be in a position to repossess their security. Foreclosing on a house can be a real nightmare, but as I said back in Chapter 4, you can turn a negative situation into one that's tolerable for both parties. Go back and review the strategies I outlined in Chapter 6 and let's get your housing situation under control.

Unsecured Creditors: Bark or Bite?

Since unsecured creditors can do little more than feed you to the debt collectors or threaten you with lawsuits, there's not a whole lot to worry about. Keep your perspective here, folks.

- You already know how to take the debt collectors out of the picture.
- You already know not to commit to repaying any creditors unless you're absolutely sure you can deliver.

- You already know that there are no debtors' prisons.
- You already know that if your credit report's torn up, this frequently reduces the chances of creditors-especially unsecured ones-pursuing lawsuits against you.

Contact your city/town's version of your free legal clinic, also known as legal aid. Many local bar associations will make attorneys available on a reduced-rate or free (pro bono) basis to low-income (or no income) folks going through hell. Always get qualified legal advice; in Appendix F, I've put together a listing of critical state-by-state information for debtors, with the following key questions answered:

- What is the statute of limitations for?
- Open accounts?
- Written contracts?
- Judgments?
- The enforcement/collectability of an unsecured debt?
- Can judgment creditors garnish wages?

This is important information that will help you get a much better grip on the degree of your leverage.

Statute of limitations on open accounts: Think of creditors like Visa, MasterCard, American Express, Discover, gas cards ... you get my drift. (Installment contracts can get complicated, and I'm not going to risk being accused of practicing law without a license. Always rely on qualified legal advice.)

The majority of your debt is very likely unsecured: In addition to obvious credit cards, the other common types of unsecured debts include medical bills, balances owed on defaulted car loans or leases, defaulted apartment leases, old balances owed for telephone, cable or electric service, etc.

Time heals all: Your leverage goes up dramatically once the "collectability" of a debt has lapsed. If you've ducked and dodged enough bullets long enough to pass through the window of time during which a creditor can sue you for defaulting on a debt, your leverage skyrockets.

Many companies will still encourage debt collectors to attempt to collect on these uncollectable debts, but once you've made it clear to the debt collector that they're history (you know the old Cease & Desist Letter routine) then stand your ground. The law's on your side.

Same thing goes for the creditor: Make it just as equally clear to the creditor (or current owner of the debt if it's been sold off) that you know the law and that their debt is no longer collectible. Remind them that they're all bark and no bite, but that you still want get this mess cleaned up and behind you (honorably) once and for all. The original creditor already knows they've got no hammer in this deal; when they realize that you're aware of your rights regarding the statute of limitations on that debt, they'll be much more amenable to work something out.

Then again, they may become enraged and just sit tight, satisfied with screwing up your credit report for the maximum period of time possible, knowing there's a good chance you'll pop back up on their radar, usually if you

want to buy or refinance a house before the credit reporting statute runs out.

Smart companies will work with you to recover whatever monies they can, so try to make a deal. Use the Original Creditor/Old Debt Settlement Letter in Appendix D to handle this.

Don't run with scissors, Part One: The average time frame for the enforceability of a debt averages 4 years across the nation, but some states allow debts to be enforced longer. Make sure you know where you stand before you get drunk with a little knowledge. This could blow up in your face if you make some incorrect assumptions.

Don't run with scissors, Part Two: Let's get clear here on the difference between the "time statutes." Whether the enforceability statute is 4 years or more is one thing, but the 7-year reporting statute—the period of time during which your transaction can be reported on your credit report—is federal law. So even though they can't sue you, they can still screw you.

Don't run with scissors, Part Three: Don't be duped by new "pre-approved" credit card offers so fast. Some credit card companies have engaged in a little smoke-and-mirrors scam that's stung quite a few debtors. Here's how it works:

1. You have an old \$1,000 balance (plus accruing fees) on an XYZ Visa that was charged off 5 or 6 years ago.

2. You suddenly get an offer from ABC MasterCard.
3. They offer to "roll" your old balance on the Visa card into your new (higher) MasterCard credit line of \$3,000.
4. You bite on the offer, sign it and send it back.
5. They issue your new MasterCard with the \$3,000 limit, except that \$1,750 of that limit's been used up with the old Visa balance that you agreed to "roll in" to the new card.
6. You call in to activate your new MasterCard and (ohmygosh!) they chopped the \$3,000 limit you thought you were getting have down to the old balance—with accrued interest, collection costs or legal fees, down to that \$1,750 balance that was coincidentally just transferred from you old, charged-off credit card.
7. The old Visa debt that wasn't enforceable or collectible has now effectively been affirmed and activated when you agreed to their terms on the new MasterCard. Please don't be a dope; read the offer and understand what you're signing first.

Don't run with scissors, Part Four: Just because a debt is past the enforceability statute doesn't mean you still can't be sued. If you get sued for anything, you've got to respond, or in legal jargon, "file an answer." If you fail to file your "answer" within the prescribed period of time, the plaintiff (aggressor, the creditor in our example) can get what's referred to as a "default" judgment—and make it stick. Even if the debt has run way past the statute, if you're sued you've got to hire competent legal counsel to represent you, file your answer and also file a "motion to

dismiss" with the court. (Again, let your attorney earn their fee, but this is an abbreviated summary of what will have to happen to dodge this infrequent threat.)

Don't run with scissors, Part Five: If you work for the federal government (this includes the post office and military) or law enforcement, you may have a higher level of exposure and reduced leverage. Make sure you have a firm grasp of any special codes of conduct that may subject you to unforeseen creditor leverage.

The Threat of Bankruptcy: "Deal or I Pull the Pin!"

Negotiating settlements for unsecured debts before the collectability-enforcement statutes runs out takes finesse and guts. If you like to play poker, you might enjoy this phase of the recovery.

Tell your unsecured creditors up front and early on that:

1. You can't pay them but want to;
2. You just need some time and breathing room.

Now ... be mentally prepared for rejection. You'll be lucky if 2 out of 10 agree to work with you, because they play this game for a living and know that you *don't*. Your creditors know that they've got the upperhand because you (more than likely) don't know what you're doing or what leverage you've really got. So they'll tell you no. Expect to hear one or more of the following responses:

1. "I'm sorry, this is the minimum amount we can accept."

2. "We can give you a reduced payment plan for 6 months, but then it's back to your normally scheduled payment plan."
3. "We can't allow you to not make payments for a year!"

Most of these creditors—showing their infinite wisdom and foresight—will simply kick your account out to a third-party debt collector that you'll make short order of with your Cease & Desist Letters. Hopefully, once your account is kicked back once or twice to the original creditor, they'll be ready to negotiate. Then again, maybe not.

Expect to "cycle through" the debt-collector drill at least a couple of times before the original creditor finally gets it. Everyone would be saved so much time, effort and brain damage if the nation's big creditors would just wake up. The major, unsecured "credit card creditors" know they're going to get nothing if the consumer decides to pull the pin on the only grenade they've got and flush everyone in bankruptcy court.

By the time your debt's gone through a cycle or two or three between the debt collector and the original creditor, your credit report's already wasted, in addition to the fact that you're tired and probably even broke. They've charged off your account as a "Bad Debt Expense," so any money they collect from you really does go straight to their bottom line. That means it's pure profit now, and a bonus they didn't expect. So shake them hard enough to wake them up and convince them to deal.

Use the letter in Appendix E and make your position and offer crystal-clear: If they want to chase you into court and get a judgment, fine. That's their prerogative, and their right. But you're giving them fair warning that if they take this route, you'll be left with no other choice than to dispose of them (and every other creditor) in bankruptcy court. This solution is quick, clean and protected by federal law.

Remember that they can always sue you for non-performance—for failing to repay a debt they're rightfully owed. That's their right.

But let's face the facts, folks: If you don't have the cash, we're back to where we started, and everybody loses. You still can't get blood out of a turnip, can you? And just because they get a judgment doesn't mean they'll ever be able to collect on it.

An earlier lesson worth reminding you of one more time: Attorneys that collect two or more debts in a year are considered debt collectors, and their actions are controlled by the FDCPA. Don't be so easily intimidated because you're now being threatened by an attorney, because they're nothing more than a debt collector with a diploma. Send them a Cease & Desist Letter and see what happens; if they're serious about suing you, you'll find out pretty quick.

Even if they do get a judgment against you, it's always possible to "buy the judgment" back for a fraction of its face value by using an "unrelated third party." Get advice from a qualified attorney before trying to enact this strategy. This particular tactic was used with great

frequency by entrepreneurs (and friends of mine) as they were digging out of their respective messes when everything cratered in Texas in the 1980s. I saw them do it, and I've seen others around the country pull it off as well. It's a game of nerves and guts and not suggested for the faint of heart, but it's a game that can be played and won many more times than it's lost.

Reread Chapter 4 and review the debt collector's "Schedule of Expected Recovery" for past due accounts. By now you should already have a different feel for this game, a far more different perspective than you had the first time you read it.

Finally, learn a lesson that took me a long time to grasp: Don't take things personally and get your feelings hurt. The worst thing a creditor can do if you attempt to settle your debt at a deep discount is to say no.

You tried, you failed. If they don't end up getting paid, that was their choice. If the roles were reversed, what would *you* do?

You really do have more power than you realize—so **use it.**

**IRS:
THE BIGGEST AND BADDEST
COLLECTION AGENCY ON THE PLANET**

"Be thankful I don't take it all, 'cause I'm the Taxman!"

George Harrison

I don't want to hear from anyone whining to me that the IRS is illegal. I've seen and heard all of the "file zero tax returns" stories by all of the anti-IRS zealots out there over the years, and I don't want to hear it. If you want to protest and not file your tax returns, then do it. Just be prepared to be deeply involved with them for the rest of your life, that's all.

I'm not wild about many of the ways our lawmakers spend our money, but that's not the issue here. All that I really care about is getting you out of a jam if you've got the IRS breathing down your neck. How or why you got sideways with them doesn't really matter either. What we need to do is get your situation under control.

You can't "pull the pin" if you haven't filed your taxes

One of the topics discussed in this book is how society—mainly the credit-granting community—has changed its attitude regarding bankruptcy over the last

several years. If you're seriously considering pulling the pin on the bankruptcy grenade and blowing up your credit-related problems once and for all, you'd better be current with your tax returns.

Get past the fear of "coming out" into the light of day. Now's the time to get everything out on the table and get your financial affairs cleaned up, once and for all. A huge piece of that puzzle almost always revolves around any IRS-related business you've let slide as your situation's been sliding along with it. And you'll never get past the front door of the federal building (and into bankruptcy court) if you haven't filed past returns.

"But they'll throw me in jail!"

Actually, you've got a better chance of being thrown in jail if you *don't* file your returns, not if you owe them a bunch of money you can't pay. You're going to have to do the best you can to assemble all of the information your qualified tax preparer will need to put together an accurate return on your behalf. Resist the urge to save some money using a friend or a family member who's "good with numbers"—that's asking for trouble. Likewise, if you use one of those companies that pops up every January and offers tax preparation services at cheapo rates. Again, the level of expertise you're going to need is probably out of their reach.

No matter if you're a year or two or dozens of years behind, you've got to get your act together and get the returns completed. My choices in this arena? A certified public accountant (CPA) would head the list, followed by

an Enrolled Agent (EA). EAs (as well as attorneys and CPAs) are the only ones authorized to represent taxpayers in IRS matters. The role of Enrolled Agents dates back to 1884; Congress acted to regulate persons representing taxpayers in their dealings with the Treasury Department. Today more than 10,000 Enrolled Agents practice nationally, and many are former IRS agents with a unique insight into the inner workings of the agency. They've either passed an IRS-administered examination or worked in positions that required them to apply or interpret provisions of the Internal Revenue Code on behalf of the IRS. An EA will be more affordable than a CPA or an attorney, although lawyers should be consulted for complex legal issues involving areas such as probate, trust, property or domestic relations issues. If there's any potential for criminal liability, you'd better rely on an attorney to maintain the attorney-client privilege and help you navigate these waters.

Should You Try to Work Out a Deal With the IRS by Yourself?

How about putting a new transmission in your car or a new roof on your house, or removing your own gall bladder while you're at it? You might save some cash by doing stuff on your own, but I think going it alone in front of the IRS for complicated issues like non-filing and the potential tax liabilities that go with it is nuts.

According to Jay Schlichting, a Dallas-based Enrolled Agent with many years of experience negotiating settlements with the IRS, "It's always best to approach the IRS on your own terms, but not on your own. Time is your

friend; the IRS won't forgive debts owed because the taxpayer 'gave himself up,' but they will based on their ability to pay.

"They do have an amnesty program of sorts—it's their Offer In Compromise program. Depending on the taxpayer's assets (or lack thereof), it's possible to make settlements for as low as 10 cents on the dollar, or even less. The bottom line? Never try to represent yourself! Let someone qualified negotiate on your behalf and keep you out of the line of fire."

I couldn't agree more, especially since having your representative speaking for you means that you'll never have to talk to the IRS yourself. You'll never have to go face to face with them, and you'll never shoot yourself in the foot because you don't know what you're doing. Look, just like the debt collectors we so thoroughly dissect in this book, the IRS agent listens to stories and excuses from taxpayers every single day. They're experts at this stuff and you're not. So why not hire experts that deal with the IRS every day to represent you? It's the smart thing to do.

They might actually owe you some money!

You may be surprised when you finally do file your old tax returns. You may have a refund coming your way. It happens more frequently than you think, but you've got to get your act together and file in order to figure it all out. And if you do owe the IRS some cash, now's the time to structure a payment plan to get that monkey off your back. Or to see if you can discharge the debt in bankruptcy court. Or to try your luck in the Offer In Compromise

department. For more information about cutting deals with the IRS, check out a section we'll continue to update as breaking news warrants it, on my website at www.bendover.com/irs.asp.

"They just cleaned out my bank accounts!"

Too many times I've heard from taxpayers who have ignored countless letters and attempts by the IRS to open discussions about their situations. You know, throwing IRS letters under your bed like a kid hiding a note from their teacher or a notice from the library about an overdue book isn't a very successful strategy.

The IRS is like the cat that's being messed with. The cat will twitch its tale and growl and, when it's finally reached its breaking point, turn and hiss with its claws and teeth bared and a take-no-prisoners attitude. The IRS is very similar. If you ignore the warnings, they'll show up at the worst possible time and make your life even more miserable. So don't let it get that far. Be pro-active while you can and head off the brain damage before it begins.

"But it's my ex's fault!"

Another frequent cause of taxpayer heartache: ex-spouses. Many times the problems of a former spouse will pop up out of nowhere, with zero warning, to haunt you. When this happens it truly is a case of an "Innocent Spouse" being victimized by their ex, and that's why Congress enacted some statutes that specifically protect ex-spouses from the financial nightmares created by their previous

marriages. You'll want to investigate the Innocent Spouse parts of the law, and if you're about to have your wages garnished or bank accounts levied, ask your tax representation expert about Form 911. This appropriately named form is, as the name implies, used in an emergency situation to "stay" certain actions by the IRS and give the affected taxpayer time to defend themselves and hire counsel.

Ben's Bottom Line

You can't afford not to hire quality representation in what could be one of the more harrowing experiences of your adult life. Putting a qualified mouthpiece between you and the IRS will be the best money you've ever spent (next to buying this book, of course).

FINAL THOUGHTS BEFORE YOU GO TO WAR

*"To sin by silence when we should protest
makes cowards out of men."*

Ella Wheeler Wilcox

I cannot emphasize this enough: Don't ever let these tele-terrorist punks bully you. Ever!

I came within an eyelash of blowing my brains out because I let one of these bottom-feeding low-lives fill me with lies, actually convincing me that I was about to be indicted and eventually be found guilty of fraud.

The only things I was ever guilty of was being naive enough to believe these sorry bastards in the first place—and a desire to try to pay off all of my creditors to dig out of the hole I'd dug myself into at the ripe old age of 28.

There's no amount of money that can replace the stability of your mental health and relationship with your spouse (or significant other) and family and friends. It's not my job to try to pass judgment on how or why you got yourself into a financial jam.

Did you lose your job?

Did you decide to get cancer or have a stroke or be in a car accident?

Did you come home one day and catch your spouse in bed with someone else?

What shot your financial wheels off? Maybe you were just flat stupid and mismanaged your money or (even more accurately) the credit lines that were extended to you. It doesn't matter. I'm not in a position to sit in judgment of you—and neither is some jerk on the either end of the phone who's playing with your emotions, twisting a verbal knife in your chest every time you don't give them the right answer.

You're going to get through this difficult time in your life, and I can tell you that you're going to recover a helluva lot faster taking my advice over theirs. If you don't like what I have to say, return the book and get your money back. If you don't like the advice they're giving you, what recourse do you have? Consider and compare our motivations:

- Sure, I want to sell you a book and get paid for my own painful debt-collector experiences, but there's more to it than that for me. It's personal. I'll make a decent living taking commissions out of their pockets, but I also want to see the bad guys put out of business. That's why I'm so passionate about this. For me, it's not just a job, it's a mission.
- What's the debt collector's motivation? Do the math. How much do you owe the creditor they're trying to collect for? Run the numbers.

Multiply the balance owed by 25% (.25 on your calculator) and there's a pretty good indicator of why they decided to take such an interest in your personal financial decisions.

The only way over-zealous debt collectors—who routinely break federal laws in the name of getting you to pay your bills—are going to be stopped is if you fight back. It's going to take people like you putting your foot down hard enough to break the back of a 100,000-strong group of money mercenaries that feast on your financial misery.

Two categories of consumers—which one are you in?

I've always said that there are two types of consumers: Those with financial problems, and those that are going to have them sooner or later. Eventually, life happens.

You have nothing to be ashamed of; almost everyone has either experienced money problems themselves or known someone close to them who has. Whatever your situation may be, it's not going to shock your state Attorney General's office or unnerve regional Federal Trade Commission officials. They've seen it all, and heard it all, before.

They also know that consumers forced to endure these unscrupulous tactics are ashamed to admit to anyone—especially a stranger—that they're having financial difficulties. Pride keeps them from notifying the authorities, thus assuring that the violating debt collector gets to terrorize broke consumers another day. I hope you'll never let this happen to you.

If they're breaking the law in the course of their business of collecting debts, they've got to be stopped. Any report you file with the FTC or the Attorney General is confidential. No one off the street or surfing the Internet will be able to get their hands on these files and read about your personal situation. They won't be able to get an insight into your private world. Frankly, nobody really cares, anyway.

But if it'll make you feel any better: I'm reporting to you about this first-hand. I tried to obtain files under the Freedom of Information Act while doing research for this book and was turned down. It "would violate the consumers' right to privacy," I was told. Fair enough; I was just trying to research violations that had been reported for this book. But it proved the "system" works. Your right to privacy is upheld—at least in this situation.

If you don't speak up and sound off, we're all sentencing a segment of our society to suffer in silence at the hands of a bunch of holier-than-thou punks who hide behind the telephones and doors of the multi-billion-dollar debt-collection industry.

There are no excuses for speaking out if your rights are being violated. It's your duty an American! There are plenty of places you need to go to file complaints. Some are accessible online and others will require a traditional type of communication called a "letter." If you don't make your voice heard and take a stand, you've just wasted your money on this book. Or maybe not. Give it to a friend or relative, or donate it to your local library. Pass it on and empower someone else if you're not willing to fight back against these punks.

You will survive

By the time you've climbed out of the pit of uncertainty, anxiety and fear that your world's become, you'll feel smarter ... and stronger. You'll have learned much about yourself and your ability to just survive.

You'll have little patience for others who haven't "been there" yet—especially when they complain about how tough their lives are. And you'll probably have a newfound compassion for those who are experiencing tough times and enduring difficult days and long nights.

And if you're anything like me, you'll probably acquire a well-developed distaste for the debt-collection industry and their sleazy tactics. Might as well add to the list while we're at it: Creditors who'd rather shoot themselves in the foot and "show you who's in charge" with their refusal to negotiate and try to work things out. Their solution is suing you and getting a judgment that forces you to play the ultimate card and flush everybody in bankruptcy court.

Aren't they the smart ones?

I expect you to make it through this difficult phase, emerging with a higher degree of respect for credit cards and a desire to live a more debt-free lifestyle.

I expect this book will probably look like it's been through a war, too. I've seen copies of the first edition of *Back Off!* dog-eared and highlighted, underlined and

paper-clipped, battle-tested and proven to be the life-saver that I know it is.

You'll find yourself going back and referring to this book time and time again. I predict you'll be amazed, as you read this book, when you come across some of the very same lines you've been hearing on the phone. I already know that many of the events I predict in this book will come true, exactly as I said they would. "How did he know that?" is a frequent response I receive, followed by increasing confidence as you utilize the techniques and ideas I've just shared with you.

I know this stuff because I've been there—and survived. I just wish I knew then what I know now, instead of learning it the hard way. But what the hell: Look at all of the pain and suffering that you are about to avoid! You'll benefit from my experiences and recover from your own personal hell much faster than I did, I promise. Money's not worth losing sleep over. It's not worth fighting with your spouse or losing your temper and screaming at the kids or breaking up a family over. It's not worth taking stupid chances or breaking the law over.

It's been said that "desperate men do desperate things," and yes, I understand that one first-hand, too. But it's just not worth it.

Get creative!

Slash your spending ... use coupons ... work extra jobs ... do whatever it takes to make ends meet. But most importantly, arm yourself with the knowledge I've

assembled in this book and get ready to go to war. Your goal is to emerge with your dignity intact and reduce your time in the "credit penalty box" as faithfully reported by our pals at Experian, Equifax and TransUnion.

You have no excuses now. You're armed with the knowledge and confidence necessary to get through this. Have fun with these "tough guys" as they try to scare you into dealing with them. Don't let them get to you, because you really **do** have the upper hand.

Now ... go kick some ass.

- Appendix A -

OBTAINING YOUR CREDIT REPORTS

In my earlier edition of this book, I covered the process involved in obtaining copies of your credit reports. But much has changed over the last few years. The explosion of the Internet is one factor ... and the troubling rise in the white-collar crime of the 21st century: Identity Theft.

As a result, all of the credit reporting bureaus are forcing consumers to jump through more hoops in their quest to get these reports. Here's the steps you need to take to move through the process quickly:

Do you have to pay for this report? Not if you've been declined credit in the last 60 days. You're also eligible for a free copy if you've been declined employment, insurance or housing based on information reported by one of the credit bureaus. The credit reporting bureau providing the information is required under federal law (Fair Credit Reporting Act or "FCRA," enacted in 1971), to give you a free copy of your report. According to the FCRA, you should have received a "turn-down" letter from the prospective credit grantor/employer/insurance company. This letter should state which credit bureau provided the information on which they based their decision, and a toll-free telephone number to call to get your free copy; this can also be accomplished on their websites. (Use it or lose it!)

Do you have Internet access? Go directly to their websites and get order your report on line. If they offer "credit score enhanced" versions, pay the extra few dollars it takes to get your hands on a copy. Here are their website addresses:

www.experian.com

www.equifax.com

www.transunion.com

No Internet Access? Order by phone: Remember that these companies will change their consumer contact numbers from time to time, so if any of the numbers below are incorrect, call Toll Free Directory Assistance: (800) 555-1212 to get their current phone number.

Experian: (866) 200-6020

Equifax: (888) 397-3742

TransUnion: (800) 916-8800

Be prepared to play "20 Questions": Okay ... maybe that's a bit of an exaggeration, but the identity theft crisis has really forced the credit reporting bureaus to work much harder to verify and confirm you are who you say you are. They will ask you to provide the following information:

- **Full name**
- **Current Mailing Address**
- **Social Security Number**
- **Date of Birth**
- **Home phone number**
- **Employer's Name**

Also be ready to provide a photocopy of a state or government-issued ID. Driver's licenses and passports will be most readily accepted; if you have neither, you'd better have a good story and explanation why.

- Appendix B.1 -

SAMPLE CEASE & DESIST LETTER

Edward Haskell
323 Elm St.
Mayfield, NY 12117

Certified Mail, Return Receipt Requested #7000 0000 0000 0000 0000

February 31, 2003

Mr. Fred Rutherford
North American Collections Specialists
1313 Main Street, Suite 500
Mayfield, NY 12116

RE: MasterCard account #5424 0000 0000 0000

Dear Mr. Rutherford:

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives.

1. You are hereby notified under provisions of **Public Law 95-109, Section 805-C, The Fair Debt Collection Practices Act** to hereby **Cease and Desist** in *any* and *all* attempts to collect the debt referenced above.
2. Your failure to do so **will** result in charges being filed against you with the state and federal regulatory agencies empowered with enforcement.
3. Since it is my position ***not*** to recognize and/or work with collection agencies, I will settle this matter directly with the original creditor.
4. You are hereby put on notice of the following:
 - Do not call me at home.
 - Do not call me at work.
 - I have Caller ID and I tape all of my phone calls.
5. Since it is my policy neither to recognize nor deal with collection agencies, I intend to settle this account with the original creditor.

Sincerely,

Eddie Haskell

Edward Haskell

EH/

- Appendix B.2 -

SAMPLE CEASE & DESIST LETTER (INVALID DEBT)

Edward Haskell
323 Elm St.
Mayfield, NY 12117

Certified Mail, Return Receipt Requested #7000 0000 0000 0000 0000

February 31, 2003

Mr. Fred Rutherford
North American Collections Specialists
1313 Main Street, Suite 500
Mayfield, NY 12116

RE: MasterCard account #5424 0000 0000 0000

Dear Mr. Rutherford:

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives.

1. You are hereby notified under provisions of **Public Law 95-109, Section 805-C, The Fair Debt Collection Practices Act** to hereby **Cease and Desist** in *any* and *all* attempts to collect the debt referenced above.
2. Your failure to do so **will** result in charges being filed against you with the state and federal regulatory agencies empowered with enforcement.
3. Since it is my position ***not*** to recognize and/or work with collection agencies, I will settle this matter directly with the original creditor.
4. You are hereby put on notice of the following:
 - Do not call me at home.
 - Do not call me at work.
 - I have Caller ID and I tape all of my phone calls.
5. Finally, **please let this letter serve as my official disputation of the debt you're attempting to collect.** Failure to honor this notice will be construed as a direct violation of both the Fair Credit Billing Act and the Fair Debt Collection Practices Act.

- continued -

Mr. Fred Rutherford, *North American Collections Specialists*
February 31, 2003

- Page 2 -

Furthermore, if any negative information is placed on my credit bureau reports by your agency after receipt of this notice, this will cause me to file suit against you and your organization, both personally and corporately, to seek any and all legal remedies available to me by law.

Since it is my policy neither to recognize nor deal with collection agencies, I intend to settle this account with the original creditor.

Sincerely,

Eddie Haskell

Edward Haskell

EH/

- Appendix B.3 -

SAMPLE CEASE & DESIST LETTER (UNCOLLECTIBLE/UNENFORCEABLE DEBT)

Edward Haskell
323 Elm St.
Mayfield, NY 12117

Certified Mail, Return Receipt Requested #7000 0000 0000 0000 0000

February 31, 2003

Mr. Fred Rutherford
North American Collections Specialists
1313 Main Street, Suite 500
Mayfield, NY 12116

RE: MasterCard account #5424 0000 0000 0000

Dear Mr. Rutherford:

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives.

1. You are hereby notified under provisions of **Public Law 95-109, Section 805-C, The Fair Debt Collection Practices Act** to hereby **Cease and Desist** in *any* and *all* attempts to collect the debt referenced above.

2. This debt is not enforceable due to the age of this account (it has been more than four years since I defaulted under the terms of the original agreement). I cannot be successfully pursued civilly in the collection of this account.

3. You/your organization must immediately **Cease & Desist** all attempts to collect the debt referenced above. Failure to comply with this law will result in my immediately filing a complaint with the Federal Trade Commission and this state's Office of Attorney General. I will pursue all criminal and civil claims against you personally, as well as your company.

4. Let this letter also serve as your warning that I may utilize telephone devices including, but not limited to, the following:

- Caller ID
- Call Trace
- Recording devices

in order to document any future telephone conversations that we may have.

- continued -

Mr. Fred Rutherford, *North American Collections Specialists*
February 31, 2003

- Page 2 -

5. Furthermore, if any negative information is placed on any of my credit bureau reports-in direct violation of the Fair Credit Reporting Act-by your agency after receipt of this notice, I may exercise my right to file suit against you/your organization, both personally and corporately, to seek all remedies available to me under the law.

Since it is my policy neither to recognize nor deal with collection agencies, I intend to settle this account with the original creditor.

Sincerely,

Eddie Haskell

Edward Haskell

EH/

- Appendix B.4 -

BLANK SAMPLE CEASE & DESIST LETTER

(Your Name)
(Your Mailing Address)
(Your City), (Your State) (Your Zip Code)

Certified Mail, Return Receipt Requested
 #(Insert number provided on USPS Form #3800)

(Date of Mailing)

(Name of Debt Collection Agent)
(Debt Collection Agency Name)
(Their Mailing Address)
(City, State and Zip Code)

RE: (Insert the account being collected information for cross-referencing here)

Dear (Mr./Ms.) (Collection Agent's Last Name):

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives.

1. You are hereby notified under provisions of **Public Law 95-109, Section 805-C, The Fair Debt Collection Practices Act** to hereby **Cease and Desist** in *any* and *all* attempts to collect the debt referenced above.

2. Your failure to do so **will** result in charges being filed against you with the state and federal regulatory agencies empowered with enforcement.

3. Since it is my position **not** to recognize and/or work with collection agencies, I will settle this matter directly with the original creditor.

4. You are hereby put on notice of the following:

- Do not call me at home.
- Do not call me at work.
- I have Caller ID and I tape all of my phone calls.

5. Since it is my policy neither to recognize nor deal with collection agencies, I intend to settle this account with the original creditor.

Sincerely,

[sign your name here]

(Your Name)

- Appendix B.5 -

BLANK SAMPLE CEASE & DESIST LETTER (INVALID DEBT)

(Your Name)
(Your Mailing Address)
(Your City), (Your State) (Your Zip Code)

Certified Mail, Return Receipt Requested #(Insert number provided on USPS Form #3800)

(Date of mailing)

(Name of Debt Collection Agent)
(Debt Collection Agency Name)
(Their Mailing Address)
(City, State and Zip Code)

RE: (Insert the account being collected information for cross-referencing here)

Dear (Mr./Ms.) (Collection Agent's Last Name):

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives.

1. You are hereby notified under provisions of **Public Law 95-109, Section 805-C, The Fair Debt Collection Practices Act** to hereby **Cease and Desist** in *any* and *all* attempts to collect the debt referenced above.

2. Your failure to do so **will** result in charges being filed against you with the state and federal regulatory agencies empowered with enforcement.

3. Since it is my position ***not*** to recognize and/or work with collection agencies, I will settle this matter directly with the original creditor.

4. You are hereby put on notice of the following:

- Do not call me at home.
- Do not call me at work.
- I have Caller ID and I tape all of my phone calls.

5. Finally, **please let this letter serve as my official disputation of the debt you're attempting to collect.** Failure to honor this notice will be construed as a direct violation of both the Fair Credit Billing Act and the Fair Debt Collection Practices Act.

Furthermore, if any negative information is placed on my credit bureau reports by your agency after receipt of this notice, this will cause me to file suit against you and your organization, both personally and corporately, to seek any and all legal remedies available to me by law.

Since it is my policy neither to recognize nor deal with collection agencies, I intend to settle this account with the original creditor.

Sincerely,

[sign your name here]

(Your name)

- Appendix B.6 -

BLANK SAMPLE CEASE & DESIST LETTER: (UNCOLLECTIBLE/UNENFORCEABLE DEBT)

(Your Name)
(Your Mailing Address)
(Your City), (Your State) (Your Zip Code)

Certified Mail, Return Receipt Requested
 #(Insert number provided on USPS Form #3800)

(Date of mailing)

(Name of Debt Collection Agent)
(Debt Collection Agency Name)
(Their Mailing Address)
(City, State and Zip Code)

RE: (Insert the account being collected information for cross-referencing here)

Dear (Mr./Ms.) (Collection Agent's Last Name):

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives.

1. You are hereby notified under provisions of **Public Law 95-109, Section 805-C, The Fair Debt Collection Practices Act** to hereby **Cease and Desist** in *any* and *all* attempts to collect the debt referenced above.

2. This debt is not enforceable due to the age of this account (it has been more than four years since I defaulted under the terms of the original agreement). I cannot be successfully pursued civilly in the collection of this account.

3. You/your organization must immediately **Cease & Desist** all attempts to collect the debt referenced above. Failure to comply with this law will result in my immediately filing a complaint with the Federal Trade Commission and this state's Office of Attorney General. I will pursue all criminal and civil claims against you personally, as well as your company.

4. Let this letter also serve as your warning that I may utilize telephone devices including, but not limited to, the following:

- Caller ID
- Call Trace
- Recording devices

in order to document any future telephone conversations that we may have.

- continued -

Name of Debt Collection Agent, *Debt Collection Agency Name*
Date of Mailing

– Page 2 –

5. Furthermore, if any negative information is placed on any of my credit bureau reports-in direct violation of the Fair Credit Reporting Act-by your agency after receipt of this notice, I may exercise my right to file suit against you/your organization, both personally and corporately, to seek all remedies available to me under the law.

Since it is my policy neither to recognize nor deal with collection agencies, I intend to settle this account with the original creditor.

Sincerely,

[sign your name here]

(Your name)

- Appendix C.1 -

PART 1: SENDING CERTIFIED MAIL USING U.S. POSTAL SERVICE FORM #3800

STEP ONE: Carefully peel off (a) the "Article Number" (skinny, 20-digit sticker that runs vertically along the left-edge of this form) and attach to the green, "Domestic Return Receipt" (illustrated in Appendix C.2), U.S. Post Office Form 3811. **You will use this same, unique, specific number in all letters you send using Certified Mail.**

STEP TWO: Fill in the "Sent To" line (b) with the name of the Collection Agent and their Collection Agency (write small!).

STEP THREE: Fill in the address lone "Street, Apt. No., or PO Box No." (c) with the street or mailing address of the Collection Agency.

STEP FOUR: Fill in the "City, State, Zip+4" line (d) with the city, state and zip code of the Collection Agency.

STEP FIVE: Peel off the protective paper covering the self-adhesive portion of the label and attach the green label (left-third) of the form directly to the upper left-hand corner of the envelope you'll be using to mail the letter (and or to the right of your return address; see illustration).

STEP SIX: The Post Office representative will fill out the rest of the form after you've paid them the appropriate fee. Be sure to staple the white half of this form (your receipt) to the copy (you're going to keep one in your file) of the letter you're about to send.

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	
ABC Collection Agency	
Street, Apt. No., or PO Box No.	
P.O. Box 12345	
City, State, ZIP+4	
New York, NY 10010-2345	
PS Form 3800, January 2001	
See Reverse for Instructions	

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may **ONLY** be combined with First-Class Mail or Priority Mail.
- Certified Mail is **not** available for any class of international mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, January 2001 (Reverse)

102595-02-M-0452

- Appendix C.2 -

PART 2: SENDING CERTIFIED MAIL USING U.S. POSTAL SERVICE FORM #3811 (GREEN RETURN REPLY CARD)

STEP ONE: You should have already completed this step (a) when you peeled off the "Article Number" (skinny, 20-digit sticker that runs vertically along the left-edge of this form) described in the first step of Appendix C.1.

Remember: This is the same, unique, specific number that should correspond to the one referenced on the form explained in Appendix C.1; you will use this unique number on each letter you mail via Certified Mail.

STEP TWO: Turn the card back over and in the boxed area labeled (at the top of the box) "Sender: Please print your name, address, and ZIP+4 in this box", neatly fill in your name and complete mailing address (b).

STEP THREE: Now turn the card back over and in section "1."(c) labeled "Article Addressed To:" neatly fill in the name of the Collection Agent and their Collection Agency, as well as their address and zip code information. (You already used this information in your Cease & Desist letter.)

STEP FOUR: In section "3."(d) labeled "Service Type" mark the box containing the words "Certified Mail" to the right of it.

All of the other lines or boxes in the remaining portions of the card should be left blank. These will be filled in by the mail carrier delivering the letter to your pal at the Collection Agency.

NOTE 1: If you do not receive your green reply card (U.S. Post Office Form 3811) back within 14 days, go to your nearest post office with your receipts showing you mailed your letter using this method and ask them to help you trace this card down.

NOTE 2: The U.S. Post Office continues to make technological improvements. If you have Internet access and wish to utilize their latest-and-greatest innovations regarding Certified Mail, Return Receipts, Reply Cards, Delivery Notifications, etc. be sure to check out their website: www.usps.com.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY										
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	<table border="1"> <tr> <td>A. Received by (Please Print Clearly)</td> <td>B. Date of Delivery</td> </tr> <tr> <td colspan="2">C. Signature</td> </tr> <tr> <td colspan="2"> ☒ Agent ☐ Addressee </td> </tr> <tr> <td colspan="2">D. Is delivery address different from item 1? ☐ Yes ☐ No</td> </tr> <tr> <td colspan="2">If YES, enter delivery address below:</td> </tr> </table>	A. Received by (Please Print Clearly)	B. Date of Delivery	C. Signature		☒ Agent ☐ Addressee		D. Is delivery address different from item 1? ☐ Yes ☐ No		If YES, enter delivery address below:	
A. Received by (Please Print Clearly)	B. Date of Delivery										
C. Signature											
☒ Agent ☐ Addressee											
D. Is delivery address different from item 1? ☐ Yes ☐ No											
If YES, enter delivery address below:											
1. Article Addressed to: ABC Collection Agency Attn. Mr. Tom Smith P.O. Box 12345 New York, NY 10010-2345	3. Service Type ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.										
2. Article Number (Copy from service label)	4. Restricted Delivery? (Extra Fee) ☐ Yes										
PS Form 3811, July 1999 Domestic Return Receipt 602596-99-04-1789											

UNITED STATES POSTAL SERVICE		First-Class Mail Postage & Fees Paid USPS Permit No. G-10
* Sender: Please print your name, address, and ZIP+4 in this box * Mr. John Doe P.O. Box 9822 Ft. Worth, TX 76147-2822		

- Appendix D.1 -

SAMPLE LETTER TO BE USED FOR SETTLING OUTSTANDING BALANCE

Elaine Benes
346 W. 48th Street, Apt. 7D
New York, NY 10010

February 31, 2003

Mr. Richard Head
Vice President of Financial Services
Acme Department Store
1234 Disk Drive
Sonoffa Beach, CA 90010-1234

RE: Agreed settlement of outstanding balance, account #123-456-789

Dear Mr. Head:

As we have discussed through previous letters over the last few months, I am willing to settle the outstanding balance on my account referenced above, according to the terms set forth below.

By affixing your signature on this letter of settlement/agreement, you agree on behalf of Acme Department Stores, Inc. to the following:

1. You agree to accept a total of \$72.50 as a final settlement of all outstanding charges/fees on the account referenced above.
2. This settlement amount will be paid to your company in certified funds as soon as I receive an executed (signed and dated) original copy of this letter from you.
3. You agree to cease any and all attempts to collect this debt, either directly or through a third-party collection agency or attorney.
4. Since you have agreed to accept the amount referenced in #1 as a full and complete settlement, you further acknowledge and agree that you will not sell this account to any third party.
5. You further agree to retract any and all negative or derogatory information lines, remarks or other comments you may have caused to be placed on my personal credit report(s) with any and all credit reporting bureaus or agencies located in the United States.
6. This agreement will not be binding until I receive a signed/dated original of this letter from you and in exchange for this, I will immediately remit certified funds to your company, bringing this transaction to a mutually agreed conclusion.

- continued -

Elaine Benes
February 31, 2003

- Page 2 -

7. If your company fails to remove all negative information regarding this transaction from all credit bureau reports-from this point forward-within ten (10) business days of your receipt of the final amount agreed to settle this account, I may seek to enforce this agreement through the courts. If this should occur and civil lawsuit is filed to remedy this breach, you agree that Acme Department Store will pay all reasonable attorneys fees and court costs incurred in my attempt to enforce this Agreement.

8. By affixing your signature below, you further warrant and acknowledge that you are duly authorized by your company to execute this Letter Agreement on their behalf, and they agree to be bound by the terms herein.

Sincerely,

AGREED AND ACCEPTED

Elaine Benes

Elaine Benes

<u>Richard Head</u>	<u>Title</u>	<u>Date</u>
---------------------	--------------	-------------

EB/

- Appendix D.2 -

BLANK SAMPLE LETTER TO BE USED FOR SETTLING OUTSTANDING BALANCE

(Your Name)
(Your Mailing Address)
(Your City), (Your State) (Your Zip Code)

(Date of mailing)

(Name of Creditor Representative)
(Creditor Name)
(Their Mailing Address)
(City, State and Zip Code)

RE: (Insert the account number being settled information for cross-referencing here)

Dear (Mr./Ms.) (Creditor Representative's Last Name):

As we have discussed through previous letters over the last few months, I am willing to settle the outstanding balance on my account referenced above, according to the terms set forth below.

By affixing your signature on this letter of settlement/agreement, you agree on behalf of _____ to the following:

1. You agree to accept a total of \$ _____ as a final settlement of all outstanding charges/fees on the account referenced above.
2. This settlement amount will be paid to your company in certified funds as soon as I receive an executed (signed and dated) original copy of this letter from you.
3. You agree to cease any and all attempts to collect this debt, either directly or through a third-party collection agency or attorney.
4. Since you have agreed to accept the amount referenced in #1 as a full and complete settlement, you further acknowledge and agree that you will not sell this account to any third party.
5. You further agree to retract any and all negative or derogatory information lines, remarks or other comments you may have caused to be placed on my personal credit report(s) with any and all credit reporting bureaus or agencies located in the United States.
6. This agreement will not be binding until I receive a signed/dated original of this letter from you and in exchange for this, I will immediately remit certified funds to your company, bringing this transaction to a mutually agreed conclusion.

- continued -

Your Name
Date of Mailing

– Page 2 –

7. If your company fails to remove all negative information regarding this transaction from all credit bureau reports-from this point forward-within ten (10) business days of your receipt of the final amount agreed to settle this account, I may seek to enforce this agreement through the courts. If this should occur and civil lawsuit is filed to remedy this breach, you agree that _____ will pay all reasonable attorneys fees and court costs incurred in my attempt to enforce this Agreement.

8. By affixing your signature below, you further warrant and acknowledge that you are duly authorized by your company to execute this Letter Agreement on their behalf, and they agree to be bound by the terms herein.

Sincerely,

AGREED AND ACCEPTED

[sign your name here]

(Your name)

[Creditor Rep's name] Title Date

- Appendix E.1 -

"SEE YOU IN BANKRUPTCY COURT" LETTER FOR RENEGOTIATING OUTSTANDING BALANCE WITH CREDITOR

Katie Bueller
370 Beech Street
Highland Park, IL 60035-4134

June 11, 1986

Mr. Ed Rooney
Vice President of Credit Card Services
First National Bank of Northbrook
2300 Shermer Rd
Northbrook, IL 60062

RE: Account #8-472-726400

Dear Mr. Rooney:

I am writing to you directly, hoping to get my financial situation with your bank under control and resolved quickly and amicably.

Due to a series of unexpected events, my financial situation has deteriorated to the point that I have consulted with an attorney to explore my Chapter 7 bankruptcy options.

With the interest rate, over-limit and late fees being assessed by your bank (and others), I'm simply unable to make any progress in my attempts to amortize the debt. I cannot (and will not) continue to "borrow from Peter to pay Paul," and want to avoid filing bankruptcy. I'm hoping that, with your assistance, we'll be able to work out a mutually beneficial resolution. I would like to:

1. Enter into an agreement that would freeze the current balance of \$3,000.
2. Make twenty (20) consecutive payments of \$150 each to pay off this account in full.
3. Have you/the bank agree that once I've successfully repaid this debt as outlined, you will cause any and all negative remarks, information or comment lines reported by your organization to be immediately removed from all of credit bureau reports in the United States within ten (10) business days of receipt of my final payment.

- continued -

Mr. Ed Rooney, *First National Bank of Northbrook*
June 11, 1986

– Page 2 –

4. Have you/the bank agree that once I have successfully repaid this debt as outlined, you will cause any and all negative remarks, information or comment lines reported by any third-party collection agency or attorneys employed by your company in the collection of this account to be immediately removed from all of credit bureau reports in the United States within ten (10) business days of receipt of my final payment.

At the risk of sounding rude, I cannot spend time or money sending counter proposals back and forth. Let's agree on this repayment plan or one that you may propose that reaches the same goals quickly, or else I will be forced to file my petition with the federal bankruptcy court.

I look forward to your prompt written reply.

Sincerely,

Katie Bueller

Katie Bueller

KB/

- Appendix E.2 -

BLANK "SEE YOU IN BANKRUPTCY COURT" LETTER FOR RENEGOTIATING OUTSTANDING BALANCE WITH CREDITOR

(Your Name)
(Your Mailing Address)
(Your City), (Your State) (Your Zip Code)

(Date of mailing)

(Name of Creditor Representative)
(Creditor Name)
(Their Mailing Address)
(City, State and Zip Code)

RE: (Insert the account number being settled information for cross-referencing here)

Dear (Mr./Ms.) (Creditor Representative's Last Name):

I am writing to you directly, hoping to get my financial situation with your bank under control and resolved quickly and amicably.

Due to a series of unexpected events, my financial situation has deteriorated to the point that I have consulted with an attorney to explore my Chapter 7 bankruptcy options.

With the interest rate, over-limit and late fees being assessed by your bank (and others), I'm simply unable to make any progress in my attempts to amortize the debt. I cannot (and will not) continue to "borrow from Peter to pay Paul," and want to avoid filing bankruptcy. I'm hoping that, with your assistance, we'll be able to work out a mutually beneficial resolution. I would like to:

1. Enter into an agreement that would freeze the current balance of \$_____.
2. Make _____ () consecutive payments of \$_____ each to pay off this account in full.
3. Have you/the bank agree that once I've successfully repaid this debt as outlined, you will cause any and all negative remarks, information or comment lines reported by your organization to be immediately removed from all of credit bureau reports in the United States within ten (10) business days of receipt of my final payment.

- continued -

Creditor Name, Name of Creditor representative
Date of Mailing

– Page 2 –

4. Have you/the bank agree that once I have successfully repaid this debt as outlined, you will cause any and all negative remarks, information or comment lines reported by any third-party collection agency or attorneys employed by your company in the collection of this account to be immediately removed from all of credit bureau reports in the United States within ten (10) business days of receipt of my final payment.

At the risk of sounding rude, I cannot spend time or money sending counter proposals back and forth. Let's agree on this repayment plan or one that you may propose that reaches the same goals quickly, or else I will be forced to file my petition with the federal bankruptcy court.

I look forward to your prompt written reply.

Sincerely,

[sign your name here]

(Your Name)

- Appendix F -

THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by
Public Law 104-208, 110 Stat. 3009
(Sept. 30, 1996)

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

Fair Debt Collection Practices Act

TITLE VIII - DEBT COLLECTION PRACTICES

Sec.	
801.	Short Title
802.	Congressional findings and declaration of purpose
803.	Definitions
804.	Acquisition of location information
805.	Communication in connection with debt collection
806.	Harassment or abuse
807.	False or misleading representations
808.	Unfair practice
809.	Validation of debts
810.	Multiple debts
811.	Legal actions by debt collectors
812.	Furnishing certain deceptive forms
813.	Civil liability
814.	Administrative enforcement
815.	Reports to Congress by the Commission
816.	Relation to State laws
817.	Exemption for State regulation
818.	Effective date

15 USC 1601 note

§ 801. Short Title

This title may be cited as the "Fair Debt Collection Practices Act."

15 USC 1692

§ 802. Congressional findings and declarations of purpose

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 USC 1692a

§ 803. Definitions

As used in this title --

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

15 USC 1692b

§ 804. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

15 USC 1692c

§ 805. Communication in connection with debt collection

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;
- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) COMMUNICATION WITH THIRD PARTIES. Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) CEASING COMMUNICATION. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

15 USC 1692d

§ 806. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3) of this Act.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

15 USC 1962e

§ 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

- (2) The false representation of --
 - (A) the character, amount, or legal status of any debt; or
 - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --
 - (A) lose any claim or defense to payment of the debt; or
 - (B) become subject to any practice prohibited by this title.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.
- (12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (13) The false representation or implication that documents are legal process.
- (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

15 USC 1692f

§ 808. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if --
 - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (B) there is no present intention to take possession of the property; or
 - (C) the property is exempt by law from such dispossession or disablement.
- (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

15 USC 1692g

§ 809. Validation of debts

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

15 USC 1692h

§ 810. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

15 USC 1692i

§ 811. Legal actions by debt collectors

(a) Any debt collector who brings any legal action on a debt against any consumer shall --

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity --

(A) in which such consumer signed the contract sued upon;

or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

15 USC 1692j

§ 812. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

15 USC 1692k

§ 813. Civil liability

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the

defendant attorney's fees reasonable in relation to the work expended and costs.
(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors --

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

15 USC 1692I

§ 814. Administrative enforcement

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under --

(1) section 8 of the Federal Deposit Insurance Act, in the case of --

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directing or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

15 USC 1692m

§ 815. Reports to Congress by the Commission

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the

enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

15 USC 1692n

§ 816. Relation to State laws [15 USC 1692n]

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

15 USC 1692o

§ 817. Exemption for State regulation

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

15 USC 1692 note

§ 818. Effective date

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Approved September 20, 1977

ENDNOTES

1. So in original; however, should read "604(a)(3)."

LEGISLATIVE HISTORY:

Public Law 95-109 [H.R. 5294]

HOUSE REPORT No. 95-131 (Comm. on Banking, Finance, and Urban Affairs).

SENATE REPORT No. 95-382 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 4, considered and passed House.

Aug. 5, considered and passed Senate, amended.

Sept. 8, House agreed to Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 39:

Sept. 20, Presidential statement.

AMENDMENTS:

SECTION 621, SUBSECTIONS (b)(3), (b)(4) and (b)(5) were amended to transfer certain administrative enforcement responsibilities, pursuant to Pub. L. 95-473, § 3(b), Oct. 17, 1978. 92 Stat. 166; Pub. L. 95-630, Title V, § 501, November 10, 1978. 92 Stat. 3680; Pub. L. 98-443, § 9(h), Oct. 4, 1984. 98 Stat. 708.

SECTION 803, SUBSECTION (6), defining "debt collector," was amended to repeal the attorney at law exemption at former Section (6)(F) and to redesignate Section 803(6)(G) pursuant to Pub. L. 99-361, July 9, 1986. 100 Stat. 768. For legislative history, see H.R. 237, HOUSE REPORT No. 99-405 (Comm. on Banking, Finance and Urban Affairs). CONGRESSIONAL RECORD: Vol. 131 (1985): Dec. 2, considered and passed House. Vol. 132 (1986): June 26, considered and passed Senate.

SECTION 807, SUBSECTION (11), was amended to affect when debt collectors must state (a) that they are attempting to collect a debt and (b) that information obtained will be used for that purpose, pursuant to Pub. L. 104-208 § 2305, 110 Stat. 3009 (Sept. 30, 1996).

- Appendix G -

THE FAIR CREDIT BILLING ACT

Have you ever been billed for merchandise you returned or never received? Has your credit card company ever charged you twice for the same item or failed to credit a payment to your account? While frustrating, these errors can be corrected. It takes a little patience and knowledge of the dispute settlement procedures provided by the Fair Credit Billing Act (FCBA).

The law applies to "open end" credit accounts, such as credit cards, and revolving charge accounts - such as department store accounts. It does not cover installment contracts - loans or extensions of credit you repay on a fixed schedule. Consumers often buy cars, furniture and major appliances on an installment basis, and repay personal loans in installments as well.

What types of disputes are covered?

The FCBA settlement procedures apply only to disputes about "billing errors." For example:

- unauthorized charges. Federal law limits your responsibility for unauthorized charges to \$50;
- charges that list the wrong date or amount;
- charges for goods and services you didn't accept or weren't delivered as agreed;
- math errors;
- failure to post payments and other credits, such as returns;
- failure to send bills to your current address - provided the creditor receives your change of address, in

writing, at least 20 days before the billing period ends; and

- charges for which you ask for an explanation or written proof of purchase along with a claimed error or request for clarification.

To take advantage of the law's consumer protections, you must:

- write to the creditor at the address given for "billing inquiries," not the address for sending your payments, and include your name, address, account number and a description of the billing error.
- send your letter so that it reaches the creditor within 60 days after the first bill containing the error was mailed to you.

Send your letter by certified mail, return receipt requested, so you have proof of what the creditor received. Include copies (not originals) of sales slips or other documents that support your position. Keep a copy of your dispute letter.

The creditor must acknowledge your complaint in writing within 30 days after receiving it, unless the problem has been resolved. The creditor must resolve the dispute within two billing cycles (but not more than 90 days) after receiving your letter.

What happens while my bill is in dispute?

You may withhold payment on the disputed amount (and related charges), during the investigation. You must pay any part of the bill not in question, including finance charges on the undisputed amount.

Date

Your Name

Your Address

Your City, State, Zip Code

Your Account Number

Name of Creditor

Billing Inquiries

Address

City, State, Zip Code

Dear Sir or Madam:

I am writing to dispute a billing error in the amount of \$ _____ on my account. The amount is inaccurate because (describe the problem). I am requesting that the error be corrected, that any finance and other charges related to the disputed amount be credited as well, and that I receive an accurate statement.

Enclosed are copies of (use this sentence to describe any enclosed information, such as sales slips, payment records) supporting my position. Please investigate this matter and correct the billing error as soon as possible.

Sincerely,

Your name

Enclosures: (List what you are enclosing.)

The creditor may not take any legal or other action to collect the disputed amount and related charges (including finance charges) during the investigation. While your account cannot be closed or restricted, the disputed amount may be applied against your credit limit.

Will my credit rating be affected?

The creditor may not threaten your credit rating or report you as delinquent while your bill is in dispute. However, the creditor may report that you are challenging your bill. In addition, the Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants who exercise their rights, in good faith, under the FCBA. Simply put, you cannot be denied credit simply because you've disputed a bill.

What if...**...the bill is incorrect?**

If your bill contains an error, the creditor must explain to you - in writing - the corrections that will be made to your account. In addition to crediting your account, the creditor must remove all finance charges, late fees or other charges related to the error.

If the creditor determines that you owe a portion of the disputed amount, you must get a written explanation. You may request copies of documents proving you owe the money.

...the bill is correct?

If the creditor's investigation determines the bill is correct, you must be told promptly and in writing how much you owe and why. You may ask for copies of relevant documents. At this point, you'll owe the disputed amount, plus any finance charges that accumulated while the amount was in dispute. You also may have to pay the minimum amount you missed paying because of the dispute.

If you disagree with the results of the investigation, you may write to the creditor, but you must act within 10 days after receiving the explanation, and you may indicate that you refuse to pay the disputed amount. At this point, the creditor may begin collection procedures. However, if the creditor reports you to a credit bureau as delinquent, the report also must state that you don't think you owe the money. The creditor must tell you who gets these reports.

...the creditor fails to follow the procedure?

Any creditor who fails to follow the settlement procedure may not collect the amount in dispute, or any related finance charges, up to \$50, even if the bill turns out to be correct. For example, if a creditor acknowledges your complaint in 45 days - 15 days too late - or takes more than two billing cycles to resolve a dispute, the penalty applies. The penalty also applies if a creditor threatens to report - or improperly reports - your failure to pay to anyone during the dispute period.

An important caveat

Disputes about the quality of goods and services are not "billing errors," so the dispute procedure does not apply. However, if you buy unsatisfactory goods or services with a credit or charge card, you can take the same legal actions against the card issuer as you can take under state law against the seller.

To take advantage of this protection regarding the quality of goods or services, you must:

- have made the purchase (it must be for more than \$50) in your home state or within 100 miles of your current billing address;

- make a good faith effort to resolve the dispute with the seller first.

The dollar and distance limitations don't apply if the seller also is the card issuer - or if a special business relationship exists between the seller and the card issuer.

Other billing rights

Businesses that offer "open end" credit also must:

- give you a written notice when you open a new account - and at certain other times - that describes your right to dispute billing errors;
- provide a statement for each billing period in which you owe - or they owe you - more than one dollar;
- send your bill at least 14 days before the payment is due - if you have a period within which to pay the bill without incurring additional charges;
- credit all payments to your account on the date they're received, unless no extra charges would result if they failed to do so. Creditors are permitted to set some reasonable rules for making payments, say setting a reasonable deadline for payment to be received to be credited on the same date; and
- promptly credit or refund overpayments and other amounts owed to your account. This applies to instances where your account is owed more than one dollar. Your account must be credited promptly with the amount owed. If you prefer a refund, it must be sent within seven business days after the creditor receives your written request. The creditor must also make a

good faith effort to refund a credit balance that has remained on your account for more than six months.

Suing the creditor

You can sue a creditor who violates the FCBA. If you win, you may be awarded damages, plus twice the amount of any finance charge - as long as it's between \$100 and \$1,000. The court also may order the creditor to pay your attorney's fees and costs.

If possible, hire a lawyer who is willing to accept the amount awarded to you by the court as the entire fee for representing you. Some lawyers may not take your case unless you agree to pay their fee - win or lose - or add to the court-awarded amount if they think it's too low.

Reporting FCBA violations

The Federal Trade Commission (FTC) enforces the FCBA for most creditors except banks. The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or to get free information on consumer issues, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at <http://www.ftc.gov/>. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

- Appendix H -

STATE EXEMPTIONS

	Homestead Exemption?	Personal Property Exemption?
Alabama	Yes	Yes
Alaska	No	No
Arizona	Yes	No
Arkansas	No	Yes
California	Yes	No
Colorado	No	No
Connecticut	No	No
Delaware	No	Yes
District of Columbia	No	Yes
Florida	Yes	Yes
Georgia	Yes	Yes
Hawaii	No	No
Idaho	No	Yes
Illinois	No	Yes
Indiana	Yes	Yes
Iowa	Yes	No
Kansas	Yes	No

	Homestead Exemption?	Personal Property Exemption?
Kentucky	No	No
Louisiana	No	No
Maine	Yes	No
Maryland	No	No
Massachusetts	No	No
Michigan	No	No
Minnesota	No	No
Mississippi	No	No
Missouri	No	No
Montana	No	Yes
Nebraska	No	Yes
Nevada	Yes	No
New Hampshire	Yes	No
New Jersey	No	No
New Mexico	Yes	Yes
New York	Yes	No
North Carolina	Yes	No
North Dakota	Yes	Yes
Ohio	Yes	Repealed
Oklahoma	Yes	No
Oregon	Yes	No

	Homestead Exemption?	Personal Property Exemption?
Pennsylvania	No	No
Rhode Island	No	No
South Carolina	Yes	No
South Dakota	No	Yes
Tennessee	No	No
Texas	Yes	Yes
Utah	Yes	No
Vermont	No	No
Virginia	Yes	No
Washington	Yes	No
West Virginia	No formal Procedure	No
Wisconsin	Yes	Yes
Wyoming	No	No

GLOSSARY

Accounts Receivable: Credit extended by any person or company to another (normally unsecured) with usual repayment terms requiring a monthly payment to amortize the balance owed.

Amortize: To liquidate or reduce an amount owed through a series of payments.

ANI: See **Automatic Number Identifier**.

Arbitrate or Arbitration: Process of settling disputes by presentation of case to a qualified third-party, whose decision is final. (A favorite technique of credit card companies seeking to avoid the usual civil court proceedings while lowering litigation costs and almost always wiping out consumers unfamiliar with the process.)

Attorney: Legal agent authorized to appear before a court of law as a representative of a party to a legal controversy.

Automatic Number Identifier: The ability of a company to identify an 800-number caller's name and address. Every time a consumer calls one of these toll-free 800 numbers, there's a record of that call; the debt collection community frequently uses this to locate a consumer's home or business location after they have gone underground.

Bababooey: Favorite term to use when abruptly hanging up the phone on a debt collector. (Also see www.jimflorentine.com.)

Bad Debt Expense: Accounting category reserved for debts deemed uncollectible.

Bankruptcy: Legal maneuver allowing consumers or businesses to discharge all debts and liabilities. The actions of most debt collection agencies force consumers into bankruptcy instead of allowing them to settle outstanding accounts.

Beacon: Branded name of the credit rating scoring system used by Equifax over the last couple of decades.

Big Brother: Term used to describe the invasive nature of today's information society, coined by George Orwell in his novel *1984*. A fitting description of the feeling consumers get when dealing with the debt-collection community.

BK: Abbreviation for the word *bankrupt*.

Blackmail: Any payment induced by or through intimidation, by use of threats of injurious information or accusations. A technique frequently used by debt collectors.

Brain damage: State of mind common to consumers enduring difficult financial circumstances. This state of mind can intensify through frequent contacts with the

debt-collection industry, and sometimes with ex-spouses, ex-girlfriends or ex-boyfriends or their attorneys.

Bulletproofing: Insulating yourself from financial adversaries such as creditors, debt collectors, attorneys, etc. Simple techniques include obtaining an unlisted phone number and post office box and/or more advanced maneuvers such as use of family trusts, corporations, etc.

Cease-Commed: Term used by the debt-collection industry to describe the status of an account. When a consumer has cease-commed a debt collector this means that they have invoked federal law by sending a Cease & Desist letter via certified mail (see Appendix B), forcing debt collectors to cease collection activity of that account.

Certified Mail: Specialized U.S. Post Office service utilized to track delivery and obtain proof of delivery of letters or packages. A method of proving a letter was actually received by targeted recipient by providing a receipt to the sender.

Chapter 7: Consumer bankruptcy filing that liquidates all non-exempt assets to pay off creditors.

Chapter 12: Bankruptcy filing reserved for working ranches, farms, etc.

Chapter 13: Type of consumer bankruptcy filing that allows the consumer to pay off creditors within a specific time period, no longer than five years. Also referred to as a "wage earner" plan.

Chapter 20: Ploy used by some bankruptcy attorneys to delay a foreclosure of real property by filing a Chapter 13 petition, then quickly converting the filing to a Chapter 7.

Charge-Off: Term used by creditors to describe action taken on an uncollectible account. Alternative term used: **Written Off To Bad Debt Expense.** This action normally results in negative information lines on a credit report that can remain for at least 7 years. (Also see **Uncollectible.**)

Class-Action Lawsuit: Legal action initiated by 3 or more parties against a defendant. Many suits in this category are initiated by state or federal attorneys.

Coercion: Exercising force to obtain compliance. A favorite technique employed by debt collectors and attorneys representing creditors.

Commission: Sum or percentage paid to a person for his successful completion of services for the collection of a debt.

Consumer Credit Counseling Service (CCCS): Best-known of the "nonprofit" organizations that sell themselves to the American public as the last hope for consumers buried in debt. Closer examination reveals that CCCS and others of their ilk are actually debt collectors for the original creditors, a fact that's routinely passed over by the counseling agencies—as well as inept members of the media—and either not fully explained or disclosed to the consumer.

Consumer Literacy Test: Test proposed by the author to be given to high school students to determine and promote competency in basic consumer skills. These skills include how to open checking and savings accounts, how to balance a checkbook, how to create/follow a budget, how credit cards work, a brief understanding of insurance, etc.

Contingency Basis: Fee paid to a third party for their involvement in either a legal proceeding or debt collection. This fee is normally paid only when a successful outcome to a legal proceeding or debt has been collected, either in part or in full.

Credit Grantor: Companies or individuals that extend financing to consumers. A credit grantor can be a mortgage company willing to finance a house, a bank willing to finance an automobile, or a major national credit grantor willing to extend credit through the issuance of a charge card such as Visa, MasterCard or Discover.

Credit Manager: Individual who oversees the lending department in a bank, department store or other credit-granting entity. Many times this individual will work closely with the collections manager to develop collections strategies for past due/bad debts.

Credit Record: National grading system filed by subject's name, birth date and social security number. Major companies providing these services include Experian, TransUnion and Equifax.

Credit Repair Manual: Derogatory term used by the credit reporting industry for any books (such as *Back Off!*)

that may show consumers the inside information about their industry.

Criss-Cross: A directory, also known as a City Directory, that is frequently used by the debt collection community to find out information about a debtor's neighbors. One section lists households and businesses by street address; another lists all telephone numbers by exchange (in numerical order) and to whom each number is assigned. A powerful tool of information intimidation utilized to put fear into unwitting consumers.

Database: Term used to describe the enormous pools of information managed by computers. Creditors and debt collectors will access national credit databases managed by companies like Experian, Equifax, TransUnion, etc.

Deadbeat: Term frequently used to demean consumers who are unable to pay their bills. Usually the nicest of the terms used by aggressive debt collectors to upset a consumer.

Debit Collector: See Third-Party Debt Collector.

Debt Management Plan: Term frequently used by debt or credit counselors. The debtor normally sends one large payment that's then distributed to their creditors under one of these plans.

Debtors' Haven: Term that refers to states such as Texas and Florida which have liberal laws protecting debtors from creditors.

Debt-to-Income Ratio: Unit of measurement that compares gross debt owed with gross income generated. An important formula for responsible lenders (such as mortgage lenders), but a number that apparently never mattered to thousands of credit-card-issuing banks.

Deceptive Forms: Another illegal trick of the debt-collector trade, these forms can take on a variety of intimidating looks—from threatening (but non-binding) documents that appear to have been issued by a court of law to demand letters that look like something issued by the IRS. (Of course they're illegal ... but you don't think that'll stop the debt collectors from using them, do you?)

Deed in Lieu of Foreclosure: Technique used with mixed results by consumers unable to continue making payments on their homes. Sometimes lenders will allow debtors to deed the property back to the lender instead of suffering through the embarrassment of a foreclosure sale on the courthouse steps.

Deep Discount: When a creditor sells Accounts Receivable or Bad Debts (to buyers that specialize in investing in, and collecting on, portfolios comprising of debts previously regarded as uncollectible) at an amount normally less than 50% of the outstanding balance.

Defaulted Student Loan: Loan made to students to attend secondary educational institutions at low interest rates. These loans are guaranteed by the federal government as an inducement to banks to make them, but as a result, are poorly researched before being made.

Deferment: Contractually agreed-to period of time a borrower is allowed to suspend payment on a debt. Usually applies to student loans and suspends the accrual of interest or late fees on the outstanding loan balance.

Deposition: Sworn statement made in the presence of a court reporter (usually) as a result of questions posed by attorneys in court (or post-judgment) action. These statements are normally made outside a court of law, and are fully admissible during trial and fully binding under perjury statutes.

Discharge Application: Form used by the Department of Education for debtors who believe they're eligible to have their student loan liability waived, voided or discharged due to extenuating qualification circumstances.

Discharged: To relieve of obligation, responsibility, etc. Common term used in bankruptcy court to describe the process of eliminating debtor obligations.

Discount: Selling Accounts Receivable or Bad Debts at an amount normally in excess of 50% of the outstanding balance. Many times this sale is made to companies that specialize in buying this type of "dead asset."

Dispossession of Property: Taking away property against the owner's wishes, normally as a result of non-payment. Also known as a *repo*, short for *repossession*.

DMP: See **Debt Management Plan**.

Empirica: Branded name of the scoring system used by TransUnion over the last couple of decades.

Enrolled Agent: Agent authorized by the IRS and empowered with negotiating taxpayer liabilities in front of the IRS; only attorneys or CPAs share a similar position of authority.

Erroneous Information: False, misleading or incorrect data. Frequently found in consumer medical or credit files across America.

Exempt Asset: Asset not at risk of being seized or forfeited as a result of legal action.

Fair Isaac: Company based in Northern California that created the algorithmic scoring system (known as **FICO**) used by the credit reporting bureaus. This company later teamed with Equifax to create the first mainstream "credit score enhanced" reports sold to consumers. (See www.myfico.com.)

False Certification of Ability to Benefit: Department of Education term describing extenuating circumstances that could void liability of student loan repayment. (Worth noting: Consult with an attorney before attempting to utilize this strategy since the name implies the potential for criminal recourse by the government.)

Federal Treasury Offset Program: Systematic program designed to garnish (seize) any monies, refunds or other benefits payable to a debtor who's in default on other

obligations, such as student loan repayment, taxes or child support.

FICO: See **Fair Isaac**.

Financial Management: Technique used to balance income vs. expenses. Responsible financial management usually results in an excess of monies available. (This style of managing finances has yet to be mastered by companies such as Enron or WorldComm.)

Flaky Loan: Questionable loan made by banks in the 1990s to questionable Internet ventures. (Also see **Defaulted Student Loans**.)

Form 911: Emergency IRS form used to temporarily halt garnishment or other seizures of assets.

Form 1099: Income reporting form used to report earnings or other types of compensation to the IRS. Frequently a threat used by debt collectors, coercing debtor to pay or else they'll be reported for any forgiven/defaulted debt, creating a potential tax liability for consumer. (See **Insolvency Rule**.)

Fraudulent Activity: Transaction designed to swindle consumers or creditors, normally cheating these groups out of goods, services or assets. (See **Sign of the Beast**; also see former agents.)

Freebie Report: A copy of your credit report given to you at no charge if you've been declined credit, insurance or

employment based on information contained in your credit report.

Golden Rule: "He who has the gold makes the rules." In other words, as long as you owe a creditor money, you're in a position of leverage and negotiating strength.

Good Faith Payment: Small, usually less-than-the-minimum payment mistakenly made by consumers (debtors) to show good will or intent. It almost always proves to be waste of money that the debtor later regrets spending.

Hired Gun: Third-party debt collector or attorney hired to emotionally pummel a consumer in hopes of collecting an overdue account.

Hot Check: Draft on a bank account that will be or has been returned by the bank for insufficient funds to pay the face amount of check issued.

Innocent Spouse: Term used by the IRS to cover current or ex-spouses who were not actively involved in the creation of a tax debt or preparation of the tax returns that may have implicated them.

Insolvency Rule: Little-known card consumer-debtors can play with the IRS: instead of getting stuck with taxes on "phantom income" (income resulting from 1099s issued for debt forgiveness by creditors or their collection agencies), debtor/taxpayers need to spend the dough to consult with quality tax professionals who will show them

how to use this under-utilized portion of the tax code to wipe out potential tax liabilities.

Interrogatory: Sworn statement made in writing as a result of a list of questions/inquiries by attorneys in court (or post-judgment) action.

Intimidation: Inspiring or inducing fear in the hope of persuading a debtor to pay a debt (a favorite tactic of debt collection agencies).

IRS Refund Offset Program: Effort initiated by the Department of Education to recover defaulted student loans by seizing the tax refunds of consumers with the assistance of the Internal Revenue Service.

Knee Breaker Collection Agency: Generic name used to describe a collection agency that may use techniques not endorsed by the *American Collectors Association* or deemed legal by the federal government under the Fair Debt Collections Practices Act. (see **Vito.**)

Late Fee: Fee frequently added on by credit card companies after late payments, this is an enormous source of profit, especially when added on with over-limit fees and usurious interest rates.

Lawyers: (see **Attorneys**; also see **Sign of the Beast.**)

Leverage: A negotiating position of strength; something creditors may have, debt collectors never have and consumers almost always have.

Mail Drop: A company such as Mailboxes, Etc. and others who provides a valuable service to consumers wanting to distance themselves from intrusive individuals such as debt collectors. Allows a new mailing or street address to be instantly created by consumers trying to insulate their lives.

Medical Bill: One of the most frequent reasons consumers are pushed into filing for bankruptcy; medical bills may frequently be appealed or negotiated with the original provider. (Since it's not uncommon to be grossly overcharged or mis-billed for medical services, consumers must be aggressive when auditing these statements.)

Mini-Miranda: Statement included on collection letters mailed by third-party debt-collection agencies notifying a debtor that any information collected by them (the collection agency) may be used to assist them in the collection of that debt.

Motion to Dismiss: Action filed by your lawyer to dismiss a groundless lawsuit, such as litigation initiated by a creditor (or debt holder) over a defaulted debt that's no longer enforceable.

National Foundation For Credit Counseling: Parent organization for CCCS (see **Consumer Credit Counseling Service**).

Negative Information (or Remarks): Statements or grades assigned on credit reports due to late payment, non-payment or default on debts owed to creditors. Bankruptcies and liens also show up under this category.

A favorite point of leverage utilized by collection agencies attempting to passively blackmail consumers.

Nine-Digit Zip Code: Increasingly becoming a powerful tool for skiptracing, the 9-digit zip codes allow specific location (if a current address can be located) of a consumer, courtesy of the U.S. Post Office. (And another compelling reason to utilize post office boxes or maildrops.)

Non-Dischargeable Debt: Debt that cannot be eliminated through bankruptcy court. Some types of IRS debt, student loans, child support and certain types of judgments fit into this category.

Offer In Compromise: Program established by the IRS that allows insolvent or low-asset tax debtors to settle outstanding balances for a fraction of their face value.

Old Debt: Debt that has been charged off/written off by a creditor, normally referred to as an outside "third party" collector. Old debts are usually those debts/accounts that have not had any charge or payment activity for over 2 years, and they are the easiest to negotiate payment/removal from credit reports with creditors.

Open Account: An account with a creditor that is still on the books and, in the opinion of the original creditor, collectible. These types of accounts usually are reported/updated to the credit bureaus and report late payments. They can be the most difficult to negotiate with a creditor.

Oxymoron: A term that contradicts itself, such as "jumbo shrimp" or "military intelligence" or "ethical debt collector" or "reasonable legal fees."

Paid As Agreed: Old term used on consumer credit bureau reports to describe an account that may have been renegotiated and/or settled for less than the full amount. Many creditors are now flagging these notations as negatives. (It's crucial that your creditor agrees to delete all information [before you pay them under your restructured terms] regarding a settled account, not just reclassify the account as "paid as agreed.")

Paralegal: Vague title used (and abused) by many debt collectors to insinuate a level of power, prestige or insight. Threats of lawsuits and jail time are frequently used by people espousing to be paralegals.

Password: An identifying word or code that consumers may set up with the phone company and other service providers that allows only authorized individuals access to information concerning an account. Unprotected accounts are frequent targets by the debt collection community in order to obtain additional information about a consumer.

Phone Card: Also known as a "calling card"; can be used as bait by collection agencies to ascertain unlisted phone numbers of unsuspecting debtors who have gone underground. (Only use these from pay phones.)

Positive Identification: A means to identify without a doubt the identity of a consumer wishing to obtain a copy of their credit file. A check and balance designed to keep

unauthorized people from gaining access to your information.

Postdated Check: A check with a date in the future, a technique utilized to commit a person to make payment after the date written on the check. (Something a consumer should never, ever give to a debt collector.)

Profit and Loss Statement: A valuable accounting function that shows a reconciliation of all gross income and expenses to offset the same, arriving at a net profit (or loss) figure.

Prospective Creditor: A credit grantor, such as a bank, that has not yet agreed to loan/lend monies for the purchase of a home or automobile, or through the issuance of a credit card.

Public Records: Another terrific source of information tapped into on a regular basis by the debt collection community in an attempt to gain insight into a debtor's activities or current location. Favorite records studied by the debt collectors include divorce records, property records, tax information and motor vehicle records.

Pull the Pin: Slang term used to describe the threat of initiating bankruptcy proceedings in order to gain the attention of creditors and increase their willingness to negotiate a settlement on the total amount owed.

Red Ink: Losses sustained by any financial entity. When individual consumers drown in red ink they may end up filing for bankruptcy; when the U.S. government engages

in this financial activity it holds another treasury note or bond auction.

Regulatory Agency: Any agency empowered by either local, state or federal authorities to enforce civil laws, such as the Federal Trade Commission.

Repo: See **Dispossession of Property**.

Re-Prioritize: The resetting of priorities in one's life, usually due to a dramatic change in circumstances. Sometimes a necessary first step toward solving one's financial problems.

Resuscitation Process: Term frequently utilized to describe "re-entry" or re-establishment of a regular repayment plan to the Department of Education for defaulted student loans.

Return Receipt: When a letter is sent by Certified Mail, this receipt (green card for domestic mail/pink card for international) gives the sender a record of who actually received/signed for a letter or package sent.

Revolving Charge Card (or Credit Line): Commonly issued by major department stores and major banks, it requires a monthly payment sufficient to amortize the outstanding balance. Example: If consumers pay only the minimum balance on a \$10,000 credit card and don't use the card for any additional purchases, it can take over 30 years to amortize/pay off the debt.

Risk Free: A concept used in lending to describe the risk vs. return of certain types of consumer/business loans.

Roll Over: What many consumers do when dealing with credit bureaus or collection agencies; giving up without a fight. Also used to describe the apathy displayed by most Americans when asked about their input in the lawmaking/enforcement process or budgetary responsibility of Congress.

Royal Flush: Slang term for a Chapter 7 "liquidation" bankruptcy, in which all unsecured creditors (usually dominated by credit card companies) are discharged. (Also the highest hand possible in poker.)

Saber-Rattling: Slang term used to describe the innuendo and threats utilized by debt collectors to scare and intimidate consumers into sending them money.

Scam: Fraudulent plan or scheme designed to separate a consumer from their money without delivering on promised goods, services (training) or value.

Scarlet Letter: "Mark" left by some life-changing event; mistakenly used for decades by consumers who had previously sought bankruptcy relief or protection.

Scoring System: A tool used by prospective lenders to grade the credit-worthiness of a potential borrower. (Alternate definition: System utilized on college campuses during warm weather.)

Secured Creditor: Creditor whose financial position is secured by real property, such as a bank or finance company with a lien on an automobile or a mortgage company secured by the house they financed. In the event of default, the secured creditor can repossess or foreclose on the property they financed, greatly reducing their chance of total loss exposure.

Secured Credit Card: A major national credit card (normally Visa or MasterCard) with a credit limit secured by a cash deposit placed with the issuing bank by the cardholder. A positive recovery step for consumers who have gotten into credit problems but need a credit card in order to get a hotel room, a rental car or other business/travel-related activities.

Self-Flagellation: Self-inflicted emotional beating many consumers give themselves after being threatened by the debt-collection industry.

Sign of the Beast: A reference to Satan in a passage from the Revelations chapter of the Bible; also used as a derogatory term describing debt collectors and some attorneys and former agents.

Skiptracing: Technique used by creditors and collection agencies to find (trace) consumers who are suddenly difficult to locate (**skips**). No magic here, just instant access to enormous databases containing a variety of information that, in most cases, will lead the debt collectors to a debtor's new front door.

Snake Oil: A negative term used normally by one individual to discredit another. Usually refers to selling or promoting something that falsely claims inflated results or expectations. (A favorite term of the American Collectors Association and many late-night infomercials.)

Social Security Number: A nine-digit number issued by the Health and Human Services Administration to identify Americans for future Social Security benefits. This number has evolved into the years as a national identifier for Americans, a serial number now used for referencing credit information files, military and school records, etc.

Statute of Limitations: Legal term describing time period covering varying contracts or liability limits; can vary state to state. (Student loans, overdue child support and murder are usually not covered by any type of limitation/expiration period.)

Telephone Recording Device: A \$20 device sold by national electronic retailer Radio Shack that allows consumers to tape telephone conversations for further review. A great equalizer when being harassed by a debt collector who thinks he's above the law.

Tele-Terrorist: Term coined by this author in 1994 to describe debt collectors who use the telephone to threaten, intimidate or coerce consumers into making poor financial decisions.

Third-Party Debt Collector: Collection agency or attorney engaged in the business of collecting debts that they did not originate. Usually taking these accounts on a

contingency basis, the majority of these collection agencies work on a commission basis. The Fair Debt Collection Practices Act specifically regulates the activities of this type of collection agent.

Threat: An indication or warning of probable trouble, often illegally used by debt collectors. (See **Debt Collector; Vito.**)

Time-Value of Money: A concept used by a large number of groups involved in money and finance. When relating to the debt-collection business, it's an accepted fact that the longer an account goes without payment or reduced payments, the lower the chances of collecting the entire amount. Thus, it's often advantageous for a creditor to settle a debt in exchange for reduced payment.

Token Payments: See **Good Faith Payments.**

Trial by Fire: Term used by individuals, often average consumers who have acquired "street smarts" by dealing directly with their financial problems. These individuals frequently include graduates from the "school of hard knocks" as well as listeners, viewers or readers to Benjamin Dover radio shows, television segments or newspaper column and/or website.

Uncollectible: Term used by creditors to describe an account that has gone past a certain period of time without payment, usually at least 6-9 months.

Underground: Another term commonly used for someone who has dropped out of sight or "skipped." Frequently the

result of incessant threats and phone calls from unethical debt collectors.

Unscrupulous Tactic: Any technique used by debt collectors in order to collect money on overdue accounts from unsuspecting consumers.

Unsecured Creditor: A creditor with no collateral protecting or minimizing their financial exposure. Practically all credit and charge cards are in this category. (The weakest position to be in during tough financial times; unsecured creditors are the largest employers of third-party debt collectors.)

Vito: Name used to describe any individual in the debt-collection industry who may use techniques not endorsed by the American Collectors Association or deemed legal by the federal government under the Fair Debt Collections Practices Act.

Vocational School: Non-traditional institution of higher learning designed to train students in job skills as opposed to educational degree plans in specific areas of study (e.g., DeVry Institute). Vocational schools can graduate students in 6- to 24-month course studies as opposed to 48 months in traditional colleges/university programs. These types of schools continue to be scrutinized by the Department of Education.

Wage-Earner Plan: Alternate term used to describe a Chapter 13 bankruptcy. This plan allows consumers to pay off creditors over a period not to exceed five years. (If possible, debtors should elect to take a Chapter 7 instead of a Chapter 13.)

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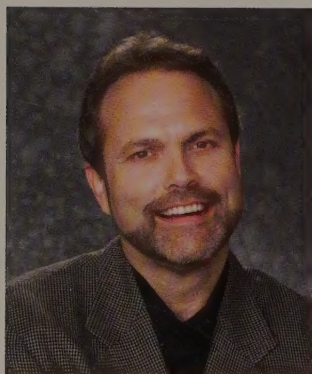
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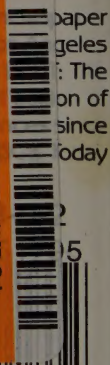
Benjamin F. Dover is a popular author, TV correspondent, columnist for The Dallas Morning News and talk show host on radio powerhouse KFI. His widely acclaimed books **LIFE AFTER DEATH**, **The Blueprint For Surviving In America's Credit Society**, and the **BACK OFF!** have led to over 2,000 television and radio appearances in 1992 on programs like Oprah, Donahue, ABC's The View, Show and The Other Half, Leeza, CNBC, CNN and more. His award-winning website, www.bendover.com, has become America's ultimate destination for common and uncommon sense advice and breaking news-you-must-use.

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